

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

Criminal Appeal 212 of 2007

(From original conviction and sentence in Criminal Case No.4021 of 2007 of the Chief Magistrate's court at Nakuru – W. KAGENDO, SRM)

WILSON ROTICH.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

WILSON ROTICH, the appellant was upon his own plea of guilty to a charge of grievous harm contrary to **Section 234** of the **Penal Code** convicted and sentenced to ten years imprisonment. He has appealed against that conviction and sentence.

At the hearing of his appeal he said he is sorry and prayed for lenience. Mr. Njogu for the state left the matter of sentence to me.

I have considered the appellant's plea. The appellant found the complainant, a child of about five years old playing with his younger brother. He lifted the complainant and remarking that he was feather weight he let him drop to the ground thereby fracturing his left shoulder. He left the poor child writhing in pain and comfortably walked away. The boy was taken to Solai Health Centre where he was treated and discharged.

There is no doubt that that was a beastly act which does not deserve any mercy being extended to the appellant. From the facts stated from the prosecutor, however, I note that Dr. Kamau assessed the degree of injury to the complainant as harm. The appellant should therefore have been charged with the offence of assault causing actual bodily harm contrary to **Section 251** of the **Penal Code** which carries a maximum sentence of 5 years instead of grievous harm which carries upto a maximum of life imprisonment. Taking this into account I quash the appellant's conviction on the charge of grievous harm and set aside the sentence of ten years imprisonment. I substitute therefore a conviction of assault causing actual bodily harm contrary to **Section 251** of the **Penal Code** and sentence him to three years imprisonment to run from the date of his conviction which is 11th October, 2007.

DATED and delivered this 5th day of November, 2009.

D. K. MARAGA

JUDGE.