REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARISSA

CRIMINAL APPEAL NO. E013 OF 2025

MAULID MOHAMED MOHAMUD ……………………………… APPELLANT

VS

REPUBLIC…………………………………………………… ……..RESPONDENT

(Appeal arising from the decision of Hon. Baraka Xavier Francis (R.M) in the Principal Magistrate's Court at Wajir Criminal Case No. E067 of 2025 delivered on 28.03.2025)

JUDGMENT

1. The appellant was charged with the offence of assault causing actual bodily harm contrary to section 251 of the Penal Code. The particulars of the charge were that, on 25.02.2025 at Griftu village in Wajir West Sub – County within Wajir County, he assaulted Safia Mohamed Omar, thereby occasioning her actual bodily harm.

2. He pleaded not guilty to the charge and the matter proceeded to full hearing with the prosecution calling four witnesses in support of its case. In his defence, the appellant stated that he was remorseful and that he had reconciled with the complainant who was his wife having slaughtered a goat and paid Kshs 114, 000/= as compensation.

3. The court upon considering the law and facts before it, reached a determination delivered on 28.03.2025 thereby convicting the appellant. On 28.03.2025, the appellant was thus sentenced to serve 2 years imprisonment.

4. Being dissatisfied with the finding of the court, the appellant filed an undated petition of appeal against his sentence on the following grounds:

   i. **He is a first offender.**
   ii. **He is remorseful for his actions.**
   iii. **He is the sole bread winner to his aged mother, siblings and his young children.**

5. The appellant urged that the appeal be allowed and the court do set him at liberty.

6. During the hearing, the appellant adopted his undated submissions thus contending that the complainant being his wife had since forgiven him. He prayed that he be released so that he could go take care of his loved ones. He contended that he had compensated the victim by paying medical expenses and cash Kes 114,000/=. He further submitted that given that he had learnt his lesson, this court should set aside his sentence and set him at liberty.

7. On his part, Mr. Owuor, the learned prosecution counsel for the respondent submitted orally urging that the term meted out by the trial court was appropriate given the circumstances of the case. He urged the court to dismiss the appeal for want of merit.

8. I have carefully considered the evidence that was adduced before the trial court against the submissions that have been filed in this appeal.

9. The appeal herein is challenging the sentence which according to the appellant is harsh given that the victim is his wife and that he has compensated her hence forgiven each other.

10. Section 354 of the CPC provides circumstances under which a court can vary a sentence as follows;

> **“ Powers of High Court**
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> **(1) At the hearing of the appeal the appellant or his advocate may address the court in support of the particulars set out in the petition of appeal and the respondent or his advocate may then address the court.**
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> **(2) The court may invite the appellant or his advocate to reply upon any matters of law or fact raised by the respondent or his advocate in his address.**
>
> **(3) The court may then, if it considers that there is no sufficient ground for interfering, dismiss the appeal or may—**
>
> **(a) in an appeal from a conviction—**
>
> **(i) reverse the finding and sentence, and acquit or discharge the accused, or order him to be tried by a court of competent jurisdiction; or**
>
> **(ii) alter the finding, maintaining the sentence, or, with or without altering the finding, reduce or increase the sentence; or**

(iii) with or without a reduction or increase and with or without altering the finding, alter the nature of the sentence;

(b) in an appeal against sentence, increase or reduce the sentence or alter the nature of the sentence;

(b) in an appeal from an acquittal, an appeal from an order refusing to admit a complaint or formal charge or an appeal from an order dismissing a charge, hear and determine the matter of law and thereupon reverse, affirm or vary the determination of the subordinate court, or remit the matter with the opinion of the High court thereon to the subordinate court for determination, whether by way of rehearing or otherwise, with such directions as the High Court may think necessary, and make such other order in relation to the matter, including an order as to costs, as High Court may think fit;

(c) in an appeal from an acquittal, an appeal from an order refusing to admit a complaint or formal charge or an appeal from an order dismissing a charge, hear and determine the matter of law and thereupon reverse, affirm or vary the determination of the subordinate court, or remit the matter with the opinion of the High Court thereon to the subordinate court for determination, whether by way of re-hearing or otherwise, with such directions as the High Court may think necessary, and make such

other order in relation to the matter, including an order as to costs, as the High Court may think fit;

(d) in an appeal from any other order, alter or reverse the order,

and in any case may make any amendment or any consequential or incidental order that may appear just and proper.

(4) Subject to subsection (5), an appellant, notwithstanding that he is in custody, shall be entitled to be present, if he desires it, at the hearing of the appeal:

Provided that where the appeal is on some ground involving a question of law alone, he shall not be entitled to be present except with the leave of the High Court.

(5) The right of an appellant who is in custody to be present at the hearing of the appeal shall be subject to his paying all expenses incidental to his transfer to and from the place where the court sits for the determination of the appeal:

Provided that the court may direct that the appellant be brought before the court in a case where in the opinion of the court his presence is advisable for the due determination of the appeal, in which case the expenses shall be defrayed out of moneys provided by Parliament.

(6) Nothing in subsection (1) shall empower the High Court to impose a greater sentence than might have been imposed by the court which tried the case.
(7) Deleted by Act No. 10 of 1969, Sch.
[Act No. 22 of 1959, s. 35, Act No. 13 of 1967, 1st Sch., Act No. 10 of 1969, 1st Sch., Act No. 5 of 2003, s.

11. The respondent was charged with the offence of assault contrary to section 251 of the Criminal Procedure Code which provides;

    "Any person who commits an assault occasioning actual bodily harm is guilty of a misdemeanor and liable to imprisonment for five years''.

12. In the instant case, the appellant is simply seeking for mercy. It is trite law that sentencing is at the discretion of the trial court and an appellate court can only intervene if the sentence is harsh or illegal or the trial court considered wrong legal principles or irrelevant factors. See **Bernard Kimani Gacheru vs Republic [2002] eKLR** where the Court of Appeal stated thus:

    "It is now settled law, following several authorities by this Court and the High Court, that sentence is a matter that rests in the discretion of the trial court. Similarly, sentence must depend on the facts of each case. On appeal, the Appellant court will not easily interfere with the sentence unless their sentence is manifestly excessive in the circumstance of the case or that the trial court overlooked some material facts or took into

account some wrong material or acted on the wrong principle even if the Appellate Court feels that the sentence is heavy and that the Appellate court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial court on sentences unless anyone of the matters already stated is shown to exist."

13. However, when imposing sentence courts are guided by various factors as outlined in the judiciary sentencing policy guidelines 2023.

14. In the case of **Daniel Kipkosgei Letting vs Republic [2021] eKLR**, the Court of Appeal pronounced itself as follows;

    "With regard to the above, we observe that the purpose and objectives of sentencing as stated in the Judiciary Sentencing policy should be commensurate and proportionate to the crime committed and the manner in which it was committed. The sentencing should be one that meets the end of justice and ensures that the principles of proportionality, deterrence and rehabilitation are adhered to..."

15. Applying the above principles to the facts of this case, it is thus clear that the requisite penalty for the offence of assault is imprisonment for five years while in this case, the appellant was imprisoned for a term of two years. The court took into account the seriousness of the injuries sustained by the victim and that it was

routine for the appellant to beat her. The court noted that the appellant was charged with a lenient offence instead of grievous harm given the extent of injuries which led to a miscarriage.

16. Taking into account the seriousness of the injuries sustained and the fact that the offence attracts a maximum penalty of 5 years, two years is not harsh nor illegal. There is no good ground cited to require this court to interfere with the sentence imposed. The fact that the appellant had made it a habit in beating the complainant his wife to the extent of becoming unconscious for a whole day and even miscarrying, is itself a factor calling for a deterrent sentence.

17. It is my view therefore that the trial magistrate properly exercised his discretion by meting out a sentence of two years' imprisonment considering the circumstances of the case. Accordingly, the appeal is hereby dismissed.

Dated, signed delivered virtually this 8th day of October 2025

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J. N. ONYIEGO

JUDGE