

County, he unlawfully did grievous harm to one Hawa Mohamed Shide.

5. Count IV: Assault Causing Actual Bodily Harm Contrary to Section 251 of the Penal Code. The particulars were that on the 1st day of May 2024 at around 1630hrs, at Bulla College of Garissa Township, Garissa Sub County within Garissa County, he unlawfully assaulted one Deka Mohamed Sahal thereby occasioning her actual bodily harm.
6. The appellant pleaded not guilty to the charges and the case proceeded to full trial in which the prosecution called 6 witnesses.
7. At the close of the prosecution's case, the Court found the appellant as having a case to answer and placed him on his defence. He then gave a sworn statement and by a judgement delivered on 06.12.2024, he was convicted on all the four counts and sentenced to serve 15 years in Counts I, II, III and 3 years in Count IV. The same were to run consecutively.
8. Dissatisfied with both the conviction and sentence, he proffered the instant appeal citing the following grounds:
 - i. That the trial Court erred in law and fact by convicting and sentencing him by relying on flawed evidence.**
 - ii. That the trial Court erred in law and fact by convicting and sentencing him while relying on prosecution's evidence which was marred with inconsistencies and contradictions.**

iii. That the trial Court erred in both law and facts by imposing harsh and excessive sentence as the same ought to run concurrently.

9. The appeal was canvassed by way of written submissions.

10. The appellant filed submissions dated 15-07-2025 in which he stated that he wished to abandon the grounds of appeal on conviction and instead dealt with the ground on sentence only. He urged that the impugned sentence was not only harsh but also hinged on wrong legal principles. He further urged that the trial magistrate erred in meting out a harsh sentence bearing in mind the circumstances under which the offence was committed. He relied on the case of **John Waweru Njoka vs Republic [2001] eKLR** where it was held that:

“In law it lies in the discretion of the court to order whether sentences should run concurrently or consecutively. Nevertheless, it is an established principle of law that where offences are committed in one transaction, the sentences ought to run concurrently even when laid in separate counts.”

11. He further relied on sections 12 and 14 of the Criminal Procedure Code and section 37 of the Penal Code to urge that the same provides that sentences may run consecutively and concurrently. That considering that the offences were committed in a single transaction, the trial magistrate ought to have meted out a

sentence that runs concurrently. This court was therefore urged to exercise its powers to rectify the same.

12. In the same breadth, he contended that the sentence of 15 years was harsh in the given circumstance noting that he was remorseful for his actions. He relied on the cases of **Republic vs Shershosky [1912] CCA 28 TLR 263** and **Shadrack Kipkoech Kagoi vs Republic Eldoret Criminal Appeal no. 253 of 2003** where the Court of Appeal stated that:

“Sentence is essentially an exercise of discretion by the trial court and for this court to interfere it must be shown that, in passing the sentence, the sentencing court took into account an irrelevant... or that a wrong principle was applied or that short of these, the sentence itself is so excessive and therefore as an error of principle must be interfered with”.

13. In the end, he urged this court to exercise its discretion and order that the sentence by the trial court be served concurrently with effect from the day of arrest.

14. The prosecution Counsel filed submissions dated 05.05.2025 arguing that noting that the prosecution proved its case against the appellant, the sentence meted out by the trial court was lenient considering the seriousness of the injuries sustained by the victims. That in regards to Count IV, the trial court sentenced the appellant to 3 years against the provision of 5 years as per the statute. The learned prosecutor relied on the case of **Benard Kimani Gacheru**

vs Republic [2002] KECA (KLR) where the court held that sentencing is at the discretion of the trial court and that an appellate court can only interfere if the same is arrived at after considering irrelevant factors or wrong legal principles:

15. That the appellant did not demonstrate that the trial magistrate acted in excess of its powers or acted on evidence that was perverted or that the sentence was harsh and manifestly excessive in the circumstances herein to warrant this court to interfere with the findings of the trial court. In the end, this court was urged to find the appeal destitute of any merit and dismiss the same.

16. As a first appellate forum, this court is obligated to revisit and re-evaluate the evidence afresh, assess the same and make its own conclusions bearing in mind that the trial Court had the advantage of hearing and observing the demeanour of the witnesses [see **Okeno vs Republic [1972] E.A 32**].

17. The issue that arises for determination in this matter is whether the sentence imposed against the appellant was justified.

18. The offence under which the appellant was convicted of was “grievous harm” contrary to Section 234 of the Penal Code, which provides as follows:

“Any person who unlawfully does grievous harm to another is guilty of a felony and is liable to imprisonment for life.”

19. The applicable principles in considering sentence on appeal were restated by the Court of Appeal in **Bernard Kimani Gacheru vs Republic [supra]**, in the following terms:

“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, the sentence must depend on the facts of each case. On appeal, the appellate Court will not easily interfere with sentence unless, that sentence is manifestly excessive in the circumstances of the case, or that the trial Court overlooked some material factor, or took into account the 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 sentence unless, anyone of the matters already stated is shown to exist”.

20. In view thereof, it is clear that the sentence imposed by the trial Court was within the statute. This observation does however not mean that this Court cannot determine the issue whether the sentence was manifestly excessive or harsh, which I now hereby do.

21. The Supreme Court, in the case of **Francis Karioko Muruatetu & Another vs Republic [2017] eKLR**, guided that, in sentencing, the following mitigating factors would be applicable; (a) age of the

offender; (b) being a first offender; (c) whether the offender pleaded guilty; (d) character and record of the offender; (e) commission of the offence in response to gender-based violence; (f) remorsefulness of the offender; (g) the possibility of reform and social re-adaptation of the offender; and (h) any other factor that the Court considers relevant.

22. Applying the above principles to the facts of this case and the judiciary sentencing policy guidelines 2023, I consider that the offence of “grievous harm” is a serious crime and the same explains the provision of statutory punishment being set up to life imprisonment. The manner and kind of injuries inflicted on the complainants in my view was severe. Pw1 and pw2 had their hands chopped off thus permanently disabled.

23. The same was compounded by the fact that the appellant without any reason simply attacked the complainants. In any event, whatever the reason that could have made the appellant attack the complainants, there was no reason at all to justify any criminal activity. I say so for the reason that law exists to govern both the citizens amongst themselves and equally against the citizens and the authority.

24. In my view therefore, the trial court exercised its discretion in meting out the 15 years in Counts I, II, III and 3 years in Count IV. The pertinent question to be answered is whether the court properly ordered for the sentences to run consecutively.

25. Section 14 of the CPC provides for circumstances under which a court can direct sentences to run concurrently or consecutively. In

the case of **Peter Mbugua Kabui vs Republic [2016] eKLR**, the court held that:

“As a general principle, the practice is that if an accused person commits a series of offences at the same time in a single act/transaction a concurrent sentence should be given. However, if separate and distinct offences are committed in different criminal transactions, even though the counts may be in one charge sheet and one trial, it is not illegal to mete out a consecutive term of imprisonment”.

26. Further, the Sentencing Policy Guidelines 2023 under paragraph 2.3.24 provides that; where the offence emanates from a single transaction the sentence should run concurrently. However, under para 2.3.25, where the offences are committed in the course of multiple transactions and where there are multiple victims, the sentences should run consecutively.

27. The appellant contended that the trial magistrate ought to have meted out a sentence that would be concurrent noting that the offences herein were committed in the same transaction. The prosecution counsel on the other hand did not submit on this aspect.

28. The Court of Appeal defined the phrase ‘*same transaction rule*’ in the case of **Republic vs Saidi Nsabuga S/O Juma & Another [1941] EACA** and revisited it again in **Nathan vs Republic [1965] EA 777** where it stated as follows: -

“If a series of acts are so connected together by proximity of time, criminality or criminal intent, continuity of action and purpose, or by relation of cause and effect as to constitute one transaction, then the offences constituted by these series of acts are committed in the course of the same transaction.”

29. In the instant case, the charges in Counts I, II, III and IV indicate that the offences were committed at the same time by the appellant. It follows thus the offences were committed in a single transaction hence the need for the trial magistrate to have meted out a concurrent sentence. I say so for the reason that the offences were connected together by proximity of time, criminality or criminal intent, continuity of action and purpose, or by relation of cause and effect.

30. In a nutshell, I am persuaded that the appeal is merited hence allowed, Accordingly, I am inclined to correct the error by directing that the sentence of 15 years in Counts I, II, III and 3 years in count IV shall run concurrently instead of consecutively as ordered by the trial court with effect from the date of sentence before the trial court.

ROA 14 days

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

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J.N.ONYIEGO

JUDGE