**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT BUNGOMA**

**CRIMINAL APPEAL NO. E088 OF 2024**

**REPUBLIC ..... APPELLANT**

**- VERSUS -**

**LILLIAN CHEBET KIPNUSU ..... RESPONDENT**

Being an appeal from the sentence of **Hon. J.O. Manasses RM** delivered on 10/7/2024 in Sirisia SPMC in Criminal Case No. E251 of 2022, R. vs Lillian Chebet Kipnusu)

**JUDGMENT**

1. The respondent was charged with the offence of causing grievous harm contrary ***to section 234 of the Penal Code.*** The particulars of the charge were that on 12/6/2022 at about 1900hrs at Chepkube sub-county within Bungoma County, the appellant unlawfully did grievous harm to one Betty Chepkemoi.

2. The appellant pleaded not guilty, and the matter proceeded to trial. Afterward, the respondent was convicted and subsequently sentenced to pay a compensation of Kshs. 150,000 to the complainant, Betty Chepkemoi, as well as to serve a C.S.O. at Chepkube Dispensary for a period of two years.

3. Being aggrieved by the sentence imposed by the trial court, the state through the office of the ODPP filed the instant appeal dated 31/7/2024, raising the following grounds.

a. **That the learned magistrate erred in fact and law by failing to mette a sentence as per the provisions of the law when the evidence on record was cogent and credible.**

b. **That the learned magistrate misdirected himself in law and fact by failing to appreciate the seriousness of the offence committed and sentencing the respondent to serve Two (2) years' probation and a compensation of Kshs. 150,000/-.**

c. **That the learned trial magistrate erred in law and fact by failing to consider the aggravating circumstances of the case and sentencing the respondent to serve Two (2) years' probation and a compensation of Kshs. 150,000/-.**

d. **The learned trial magistrate erred in fact and law by sentencing the respondent to serve Two (2) years' probation and a compensation of Kshs. 150,000/- while it had convicted the respondent on a serious offence of grievous harm.**

e. **The learned trial magistrate erred in law and fact by failing to consider that the offence committed is a felony.**

4. In support of its case, the appellant submitted that the sentence meted out by the trial court was not proportionate with the offence the respondent committed and that it was erroneous for the trial court to rely on the case of **Criminal Appeal No. 2 of 2023 Republic v Joseph Nthwaiya Njenga** as the circumstances therein were not similar to the case before it. That the sentence by the trial court be set aside and replaced with the lawful life imprisonment.

5. On her part, the respondent submitted that the appellant's complaint that the sentence imposed was lenient was not the legal test for interference and merely was a difference of view thus fell short of demonstrating that the trial court's exercise of discretion was unlawful or perverse as held in the case of **Mwanza Sayeko v Republic 1989] KEHC 84 (KLR)**. The law recognises rehabilitation and restitution as legitimate parts of sentencing; thus, this court ought to dismiss the appeal.

**DETERMINATION**

6. I have considered the pleadings herein as well as the submissions by both parties.

7. The state appealed against sentence on the ground that the trial court imposed a lenient sentence by imposing a compensation of Kshs. 150,000/- payable to the complainant as well as a 2 year C.S.O. at Chepkube Dispensary. Their argument is that the offence of grievous harm carries a maximum sentence of life imprisonment and urges this court to enhance the sentence.

8. Section 234 of the Penal Code provides for the offence of Grievous Harm as follows:

> **234. Grievous Harm**
>
> **Any person who unlawfully does grievous harm to another is guilty of a felony and is liable to imprisonment for life.**

9. The Court of Appeal in the case of Ogolla s/o Owuor v Republic, [1954] EACA 270, pronounced itself on this issue as follows: -

> ***"The Court does not alter a sentence unless the trial Judge has acted upon wrong principles or overlooked some material factors."***

10. The applicable principles in considering sentence on appeal were restated by the Court of Appeal in Bernard Kimani Gacheru v Republic [2002] eKLR, 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".***

11. In applying the above guidelines, I observe that being liable to a life sentence is not a mandatory life sentence, but it may attract a life sentence or any other lower sentence depending on the circumstances of each case.

12. In the instant case, the respondent and complainant are in-laws. In the pre-sentence report dated **9/7/2024**, which the trial court took into account prior to sentencing, the

probation officer noted that the respondent was remorseful, was a single mother of three children who depended on her as the sole bread winner. That her larger family was willing to make compensation for the offence and as such urged the court to mete out a non-custodial sentence.

13. The fundamental purpose of sentencing can be pursued by applying one or more of the following objectives as stated in the Judiciary Sentencing Policy Guidelines:

    i). ***Denunciation***

    ii). ***Deterrence***

    iii). ***Separation***

    iv). ***Rehabilitation***

    v). ***Reparation***

    vi). ***Offender-victim-community restoration***

14. In the present case, the complainant lost an eye after the accused picked up a sharp object and pierced it, leaving her bleeding profusely. The injury was aggravated. The offender took the law into her own hands. The facts relied on by the trial magistrate when sentencing the respondent cannot be compared with those in this case. The sentence was very lenient given the injury sustained by the complainant. The appellant has demonstrated that an enhancement of the sentence is justified. I therefore set aside the two-year

probation order and sentenced the respondent, Lilian Chebet Kipnus, to serve five (5) years' imprisonment from the date of the trial court's sentence. The period she has served on probation shall be counted as part of her sentence. Right of Appeal explained.

**Dated, signed and delivered via Teams on this 9th Day of April 2026.**

**R. E OUGO**

**JUDGE**

**In the presence of:**

**Miss Matere For the Appellant**

**Lillian Chebet Kipnusu/Respondent**

**Wilkister - C/A**