



REPUBLIC OF KENYA
IN THE COURT OF KENYA AT SIAYA
CRIMINAL APPEAL NO. 141 OF 2016

MOSES WAFULA BARASA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an Appeal against both the conviction and the sentence dated 25.08.2016 in Criminal

Case No. 42 of 2016 in Ukwala Law Court before Hon. Oanda – S.R.M.)

J U D G M E N T

1. The Appellant **MOSES WAFULA BARASA** faced a charge of **Grievous Harm Contrary to Section 234 of the Penal Code**. The particulars of the charge are that on the 28th day of January 2016 at Simur Sub-Location in Ugenya Sub-County within Siaya County unlawfully did grievous harm to **JACKLINE AHENDA**.

2. That upon full trial the Appellant was found guilty, convicted and sentenced to serve five (5) years imprisonment.

3. Aggrieved by the sentence the Appellant preferred this appeal setting out four (4) grounds of Appeal as follows:-

- a. That the complainant was in a state of confusion hence pleaded guilty without knowing the consequences of the offence in question.*
- b. That the Appellant begs leave of the Honourable Court to review his fine in question and reduce the sentence due to his old age and a sickling nature.*
- c. That the Appellant is a sole breadwinner of a family that fully depends on him for social economic needs and his incarceration is more threatening to their lives.*
- d. That his sincere mitigation if considered will allow his deteriorating conditions be met since he uses herbal medication for his condition.*

4. At the hearing of the appeal the Appellant urged that he is not challenging the conviction but the sentence urging he has been in custody since February, 2016 and that the complainant was a woman he had inherited. He urged the Court to reduce the sentence due to his old age and that he is breadwinner of his family.

5. M/s. Odumba, the Learned State Counsel, urged that the injuries sustained by the complainant were serious. That the complainant was inherited by the Appellant hence this caused the problem, as the complainant threatened to end the relationship. She urged the sentence meted was proper and prayed that the same be confirmed.

6. The facts of the Prosecution case are as follows:-

On 28.1.2016 at around 11.00 a.m. the complainant was doing laundry at her home when the Appellant went to her home armed with a panga and appeared drunk. The complainant told the Appellant if he came drunk he should not enter the complainant's compound but should go away. The complainant then continued with her chores but after a while she heard the Appellant coming back to where she was, she stood up and saw him lifting a panga aiming at her. The complainant was then cut on the left eye brow, which cut extended to her left side of her face upto her ear lobe. The complainant ran away but the Appellant pursued her and cut her on the right lower jaw. The complainant sought refuge at her neighbour's home. She was rushed to Ukwala Hospital. The complainant informed her brother-in-law, that the Appellant had assaulted her. The Appellant was apprehended as he planned to escape. The complainant was treated and referred to Siaya County Referral Hospital, from where she was referred to Jaramogi Oginga Odinga Teaching & Referral Hospital and admitted for 3 days and discharged. That she was given another appointment for theatre. That on returning, she was hospitalized for 2 days.

The P3 form exhibit 1 reveals that the complainant sustained a deep cut over the left forehead and the skull visibly fractured, and cut wound on the right side of the chin. The Clinical Officer who examined the complainant categorized the injury as grievous harm because there was a fracture on the skull which would have led to injuries on the brain or bleeding from the brain which would lead to permanent disability to the complainant.

7. **Section 234** of the Penal Code provides as follows:

“Sec. (234). Any person who unlawfully does grievous harm to another is guilty of a felony and is liable to imprisonment for life. “

8. I have very carefully considered the circumstances surrounding the commission of this offence, that the appellant was an inheritor of the complainant, as he orally submitted before this Court, and that he is elderly. The Appellant in his defence and in his mitigation did not raise any mitigation that would have moved the court to issue a non-custodial sentence. The Appellant act was indeed an act of violence against women. The Appellant was an inheritor of the complainant and he should have showered her with love and played a role of a good partner or inheritor by giving the complainant good company rather than committing the acts of violence which are life threatening to the complainant's life. The sentence meted against the Appellant is indeed very lenient in view of the serious injuries he deliberately inflicted on the complainant. The Appellant using a panga to cut the complainant on her head, he did not only intend to inflict pain and suffering on her but he either intended to cause grievous harm to her, which he did or intended to kill her. The Court on ordering the Appellant to serve 5 years imprisonment acted rightly by sending a clear message to would be inheritors of women that violence against such inherited women would not be tolerated by Courts. I find the sentence meted against the Appellant is deserved and I need not interfere with the same.

9. The upshot is that this appeal has no merits. The conviction is upheld and sentence confirmed.

DATED AND SIGNED AT SIAYA THIS 12TH DAY OF APRIL 2017.

J.A. MAKAU

JUDGE

DELIVERED IN OPEN COURT.

In the presence of:

Court Assistants:

1. George Ngayo
2. Patience B. Ochieng
3. Sarah Ooro

Appellant: in person, present

M/S Odumba: for State

J.A. MAKAU

JUDGE