



IN THE COURT OF APPEAL

AT ELDORET

(CORAM: MUSINGA, GATEMBU & MURGOR, J.J.A.)

CRIMINAL APPEAL NO. 125 OF 2014

BETWEEN

STEPHEN CHEBII CHEBOIWO APPELLANT

AND

REPUBLIC RESPONDENT

(Appeal from the judgment of the High Court of Kenya at Eldoret, (Kimondo, J.) dated the 28th day of November, 2013

in

HCCRA NO. 172 OF 2011)

JUDGMENT OF THE COURT

1. The appellant was convicted of a felony of causing grievous harm contrary to **section 234** of the **Penal Code**. He was sentenced to 15 years' imprisonment. His first appeal to the High Court against both conviction and sentence was rejected.

2. The appellant, who was unrepresented, preferred a second appeal to this Court. The appeal is however against sentence only. The appellant contended that it was very severe. He urged the Court to exercise leniency and reduce the sentence by 3 years so that he could be set free, having been in prison custody since 8th August, 2011.

3. **Mr. Mulati**, Senior Principal Prosecution Counsel, opposed the appeal, submitting that the court had no jurisdiction to entertain the appeal as it was purely against a lawful sentence.

4. We agree with Mr. Mulati. **Section 361 (1) (a)** of the **Criminal Procedure Code** states as follows:

“A party to an appeal from a subordinate court may, subject to subsection (8), appeal against a decision of the High Court in its appellate jurisdiction on a matter of law, and the Court of Appeal shall not hear an appeal under this section –

(a) on a matter of fact, and severity of sentence is a matter of fact.”

5. In view of the foregoing, we find that this Court has no jurisdiction to entertain this appeal as it relates to severity of sentence, which is a matter of fact. Consequently, we hereby dismiss the appeal. It is so ordered.

DATED and Delivered at Eldoret this 27th day of April, 2017.

D. K. MUSINGA

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JUDGE OF APPEAL

S. GATEMBU KAIRU, FCIArb

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JUDGE OF APPEAL

A. K. MURGOR

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JUDGE OF APPEAL

I confirm that this is

a true copy of the original.

DEPUTY REGISTRAR.