IN THE COURT OF APPEAL

AT NYERI

CORAM: WAKI, NAMBUYE & KIAGE, JJA)

CRIMINAL APPEAL NO. 14 OF 2014

BETWEEN

STEPHEN MUGANE KARURI..... APPELLANT

AND

REPUBLIC.....RESPONDENT

(An Appeal from the Judgment of the High Court of Kenya at

Keroguya (Olao, J.) dated 27th November, 2013).

in

(H. C. CR. A. No. 38 of 2013)

****

JUDGMENT OF THE COURT

This is yet another of the numerous matters that come before us on a second appeal to this Court, in which the appellant either restricts the appeal to sentence or abandons the appeal on conviction and pleads for leniency on sentence. The *"Memorandum of Appeal"* or *"Grounds of Appeal"* documents filed as a basis for such appeals are invariably titled *"Mitigation"* while the appellant in submissions would call them *"Malilio"* in *Kiswahili*. We think in the interest of giving a chance to those appellants who have genuine legal issues to address before the court, and to avoid unnecessary backlog of appeals, appellants who purport to merely plead for reduction of sentence for no other reason but because it is severe, must be reminded by prison authorities or those that advise them, that this Court deals with matters of law only and severity of sentence is not a matter of law but a matter of fact as stated in **Section 361(1)(a)** of the **Criminal Procedure Code.**

The appellant here is **Stephen Mugane Karuri.** He was tried and convicted before Gichugu Principal Magistrate, **T. M. Mwangi,** for the offence of causing grievous harm contrary to **Section 234** of the **Penal Code**. The prosecution was able to prove beyond reasonable doubt by circumstantial evidence which came through six witnesses, that on the night of the 23rd day of December 2010, at Thumaita village in Kirinyaga, he unlawfully slashed the left hand of his 14 year-old mentally retarded daughter

with a *panga*. The appellant had earlier arrived home drunk and refused to take the food prepared by his wife (PW1) and the wife left the home to take refuge at her brother-in-law's house to escape the quarrel, leaving their daughter with the appellant alone. Later that night she was called by the appellant's niece (PW2) only to be told that her daughter was dying. The niece had been summoned to the house by the appellant to go and see the child who was bleeding. Together with PW3**,** a son of the appellant, PW2 collected the child and took her to hospital where she was admitted and treated for the deep cut wound for 3 weeks, according to the examining doctor, PW4. All the evidence pointed to the appellant as the assailant because he was left alone with the child who had no injury apart from the effects of cerebral palsy. He went into hiding after the event but was arrested five days later and charged with the offence.

His defence was that there was a family quarrel that night involving himself, his son (PW3) and his wife (PW1), and it was the son who held a *panga* threatening to cut him for quarreling his mother. The son then swung the *panga* at him but he ducked and the *panga* slashed the child who was nearby. He said he ran away from the home to escape his son's wrath. That defence was dismissed as it was false. Upon his conviction he was sentenced to serve 10 years in prison. Subsequently, he appealed to the High Court at Kerugoya **(Olao J.)** but the appeal was dismissed on both the conviction and the sentence.

The appellant intimated his desire to appeal against the entire judgment of the High Court by filing a notice of appeal and "Grounds of Appeal." But his 5 grounds of appeal were a plea to reduce his sentence because he is a first offender; a law abiding citizen with a clean record; lacking knowledge in legal matters; poor in health; and deserving of a lesser or non-custodial sentence to go home and look after his children. He repeated those pleas in oral submissions before us, but learned Assistant Director of Public Prosecutions, **Mr. Kaigai,** opposed the plea because this Court lacked the jurisdiction to consider it. That is because **Section 361** of the **Criminal Procedure Code** limits second appeals to matters of law only and declares severity of sentence as a matter of fact. In his view, the sentence meted out for causing such grievous harm to a defenceless sick child was well deserved and the appellant was lucky he was not sentenced to life imprisonment which the law permits.

Mr. Kaigai is right on the jurisdictional issue. The plea by the appellant is merely for reduction of sentence which he feels was excessive. But it is a lawful sentence and the two courts below exercised their discretion in meting out and affirming the sentence. We have no reason to interfere and none has been shown to us.

For those reasons we order that the appeal be and is hereby dismissed.

Dated and delivered at Nyeri this 3rd day of February, 2016

P. N. WAKI

.....

JUDGE OF APPEAL

R. N. NAMBUYE

.....

JUDGE OF APPEAL

P. O. KIAGE

.....

JUDGE OF APPEAL

I certify that this is a true

copy of the original

DEPUTY REGISTRAR