



IN THE COURT OF APPEAL

AT NYERI

(CORAM: VISRAM, KOOME & ODEK, JJ.A)

CRIMINAL APPEAL NO. 87 OF 2014

BETWEEN

ISAACK KIRATU MUNYIRI APPELLANT

AND

REPUBLIC RESPONDENT

(An appeal from the judgment of the High Court of Kenya at Embu (Karanja, J.)

dated 9th March, 2010

in

H.C.CR.A No. 91 of 2008)

JUDGMENT OF THE COURT

1. **Isaack Kiratu Munyiri**, the appellant, was charged with the offence of occasioning grievous harm contrary to **Section 234** of the **Penal Code** in the Senior Resident Magistrate's Court at Kerugoya. The particulars of the offence were that on 11th December, 2006 at Kibingo Village in Kirinyaga District within the then Central Province, the appellant unlawfully caused grievous harm to Beth Wambui Munyi.
2. The appellant pleaded not guilty and the prosecution called a total of four witnesses in support of its case. It was the prosecution's case that on 11th December, 2006 at around 9:00 a.m. while PW1, Beth Wambui (Beth) was on her way to the farm, the appellant, her youngest son, called her and inquired where she was going. After informing him that she was going to the farm, the appellant asked her why she had not gone to look for fodder for the cows. Before Beth could respond the appellant slashed her severally with the panga he had; Beth screamed for help but the appellant continued cutting her. PW2, Nancy Muthoni Mwaniki (Nancy) who was nearby was attracted by the screams and she ran into the compound. She saw the appellant cutting Beth who was then on the ground with a panga. According to Nancy, the appellant threatened to kill anyone who tried to help Beth. The appellant stopped cutting Beth when she lost consciousness. Thereafter, Beth was rushed to hospital and received treatment. Unfortunately, Beth became paralyzed due to the injuries she had sustained. The appellant was arrested and arraigned in court.
3. In his defence the appellant gave an unsworn statement. He admitted to attacking his mother but

maintained it was due to the influence of alcohol. After considering the evidence on record, the trial court convicted the appellant and sentenced him to life imprisonment. Aggrieved with the said decision, the appellant appealed to the High Court against his conviction and sentence. By a judgment dated 9th March, 2010 the said appeal was dismissed. It is that dismissal that has provoked this second appeal before us.

4. The appellant appeared in person while Mr. Kaigai, the Assistant Deputy Public Prosecutor, appeared for the state. The appellant submitted that his appeal was only on the sentence meted out to him. He argued that it was excessive and harsh. In opposing the appeal, Mr. Kaigai submitted that no appeal could lie before this Court on the issue of severity of sentence.
5. We have anxiously considered the appeal before us and the law. In *Ogolla s/o Owuor, (1954) EACA 270* the predecessor of this Court stated:

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

In this case the appellant was lawfully sentenced to life imprisonment in accordance to **Section 234** of the **Penal Code**. On the issue of severity of the said sentence, **Section 361(1) (a)** of the **Criminal Procedure Code** provides:-

"(1) 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;..."

Based on the foregoing provision this Court has no jurisdiction to consider any issue on severity of sentence on a second appeal. See *Solomon Kiptoo Sawe -vs- Republic- Criminal Appeal No. 66 of 2006 & James Oromo -vs- Republic- Criminal Appeal No. 68 of 2006*.

6. The upshot of the foregoing is that the appeal herein lacks merit and is hereby dismissed.

Dated and delivered at Nyeri this 21st day of January, 2015.

ALNASHIR VISRAM

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JUDGE OF APPEAL

MARTHA KOOME

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JUDGE OF APPEAL

J. OTIENO-ODEK

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JUDGE OF APPEAL

I certify that this is a
true copy of the original.

DEPUTY REGISTRAR