



IN THE COURT OF APPEAL OF KENYA

AT ELDORET

CRIMINAL APPEAL 267 OF 2005

BETWEEN

FRANCIS AMOJONG EKAL APPELLANT

AND

REPUBLIC RESPONDENT

(An appeal from a ruling of the High Court of Kenya

Kitale (Lady Justice Karanja) dated 16th June, 2005

in

H.C.CR.C. NO. 16 OF 2005)

JUDGMENT OF THE COURT

The appellant was convicted on his own plea of guilty by Senior Resident Magistrate, Lodwar for the offence of grievous harm contrary to *section 234* of the Penal Code and sentenced to 10 years imprisonment.

On 22nd February, 2005 the appellant arrived home while drunk. He demanded food from his mother *Christine Amuron*, the complainant in the case. When the complainant informed him that there was no food, the appellant became angry, picked a stool and hit her on the upper left side of the head causing a deep cut wound. The complainant was treated at Lodwar District Hospital. The complainant sustained a swollen left eyelid and deep cut wound on the head which injuries were classified as maim.

The appellant appealed to the High Court at Kitale complaining about the manner the plea was taken and about the stiff sentence. At the hearing of the appeal, the appellant pursued only the appeal against the sentence. The appellant had one previous conviction for assault. The superior court partially allowed the appeal against the sentence and reduced the sentence of 10 years imprisonment to 8 years imprisonment. The appellant has appealed to this Court against the sentence only.

The appeal is opposed on the ground that an appeal against sentence is incompetent under *Section 361 (1) (a)* of the *Criminal Procedure Code*.

It is true that *section 361 (1) (a)* of the *Criminal Procedure Act* denies this Court jurisdiction on a second appeal to hear an appeal on a matter of fact and states categorically that severity of sentence is a matter of fact.

Thus, this being a second appeal against the severity of the sentence, by *section 361 (1) (a)* the court has no jurisdiction to entertain it.

In the result, the appeal is dismissed.

Dated and delivered at Eldoret this 21st day of September, 2007.

S. E. O. BOSIRE

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JUDGE OF APPEAL

E. M. GITHINJI

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JUDGE OF APPEAL

J. W. ONYANGO OTIENO

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR