



REPUBLIC OF KENYA



**Bonaya v Republic (Criminal Appeal E017 of 2021)
[2024] KEHC 3139 (KLR) (21 March 2024) (Judgment)**

Neutral citation: [2024] KEHC 3139 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARSEN
CRIMINAL APPEAL E017 OF 2021
SM GITHINJI, J
MARCH 21, 2024**

BETWEEN

ABDUL HASSAN ADEN ALIAS GUYO BONAYA APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal against the decision of Hon A.P.Ndege – PM delivered
on 8th October, 2020 at Hola in criminal case No.136 of 2018)*

JUDGMENT

Representation:

Hon. Justice S. M. Githinji

Appellant in person

Ms Mkongo for the State

1. Abdul Hassan Aden Alias Guyo Bonaya was charged in the lower court with the offence of grievous harm, contrary to section 234 of the *Penal Code*.
2. The particulars of this offence are that on the 10th day of October, 2018 at about 16.30Hours at Hola G.K.Prison in Tana River Sub-County within Tana River County, the appellant herein unlawfully did grievous harm to Hassan Mohamed.
3. The prosecution case is that the complainant in this case and the appellant were inmates at Hola G.K. prison. They were both held in block 2 together with other 24 inmates. On 10/10/2018 at around 4.30PM the two quarreled verbally. The appellant claimed that the complainant was backbiting him. The appellant left for the toilet. There was a stick kept there to sanitize the toilet as there was no water. He picked the said stick. The complainant had a problem with his right eye and was seeing using his



left eye. The appellant returned and using the said stick stabbed the complainant in the left eye. The complainant got seriously injured. He held on the injured eye and screamed for help. PW-2 an Imam at the said block witnessed the incident. PW-3 the officer who was on duty (in charge shift) heard the cry by the complainant. He rushed to block 2 and found the appellant holding the stick (club). The complainant was holding on his injured eye. The two were taken to Hola Police Station with the recovered stick. A report was made at Hola Police Station. PW-5 issued the complainant with a P-3 form. Complainant was taken to Hola County Referral Hospital. The injured eye was examined and had a wound inside the eyeball. There was a risk of him getting blind. He was in severe pain and appeared confused. The P3 form was filled on 11/10/2018 where the injury was indicated as main.

The stick and the P3 form were produced in court as exhibits.

4. The appellant in his defence stated that he was held in Hola G.K.Prison together with the complainant. The complainant had raised allegations that someone wanted to kill him in the house. When the Roll call was done six inmates were removed outside including the appellant. However, the complainant was not. Complainant later screamed while the appellant was far from him. He said that he was hurt with a club. The appellant alleges clubs are not allowed in prison and he never committed the offence.
5. The trial court evaluated the evidence and found the offence established by the prosecution beyond reasonable doubt. The appellant was convicted of it, and given that he was not a first offender and committed the offence while in prison was sentenced to life imprisonment.
6. The appellant dissatisfied with the said conviction and sentence, appealed to this court on the following grounds; -
 1. The court's view that he was a dangerous person in the society was not supported by evidence.
 2. That he should have been convicted of assault and not grievous harm.
 3. The sentence meted is manifestly harsh and excessive.
 4. His mitigation was not weighed.
 5. Mandatory life sentence was declared unconstitutional by the Court of Appeal.
 6. Time spent in custody was not put into consideration.
7. The said appeal was canvassed by way of written submissions. The appellant filed his but the respondent did not.
8. Looking at the grounds of the appeal, I do find that the appellant is not contesting the conviction but mostly the sentence meted against him. He was charged with grievous harm, contrary to section 234 of the *Penal Code* which reads; -

“ Any person who unlawfully does grievous harm to another is guilty of a felony and is liable to imprisonment for life.”
9. The complainant was injured in the left eyeball in which a wound was caused. There was risk of losing eyesight in accordance to the doctor who filled the P-3 form. The degree of injury was indicated as main which is “grievous harm.” As such, there is no way the appellant would have been convicted of a lesser offence of assault of which he was not charged with, and neither established in the trial. He was rightly convicted of the offence charged with and of which was proved against him beyond reasonable doubt.
10. On sentence the trial court considered the circumstances under which the offence was committed. It was in prison, a correctional institution where such is least expected or should not happen at all. The



complainant was mono eyed and the appellant targeted the only eye he was using to see, the left one. The intention was to turn him completely blind. He was malicious, merciless and brutal in commission of the said offence.

11. He was not a first offender and all these are aggravating factors which informed the stiff sentence. Life imprisonment is provided for in law for the said offence and is not therefore illegal. However, guided by the decision in the case of *Julius Kitsao Manyeso v Republic*, Application No.12 of 2021, where the court observed that; -

“We also acknowledge that in Kenya and internationally, sentencing should not only be used for the purpose of retribution, it is also for the rehabilitation of the prisoner as well as for the protection of civilians who may be harmed by some prisoners. We find the comparative jurisprudence with regard to the indeterminate life sentence compelling. We find that a life sentence should not necessarily mean natural life of the prisoner, it could also mean a certain minimum or maximum time to be set by the relevant judicial officer along established parameters of criminal responsibility, retribution, rehabilitation and recidivism.”

12. Considering the foregoing, in this case. I do find the ends of justice will be served if “life imprisonment” is held to amount to 20 years’ imprisonment. I therefore vary the sentence to 20 years’ imprisonment to count from the date of apprehension which is indicated as 16/10/2018.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MALINDI THIS 21ST DAY OF MARCH, 2024

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S.M. GITHINJI

JUDGE

In the Presence of; -

The Appellant in Person

Ms Ochola holding brief for Ms Mkongo

