



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KISII**  
**CRIMINAL APPEAL NO. 46 OF 2010**

**(Being an appeal from original conviction and sentence of the SRM's court at Keroka in criminal case No. 349 of 2009 – A.P. Ndege, R.M.)**

**BETWEEN**  
**PETER KURENDI ..... APPELLANT**  
**VERSUS**  
**REPUBLIC ..... RESPONDENT**  
**JUDGMENT**

The appellant was charged with assault causing actual bodily harm contrary to **section 251** of the **Penal Code**. The particulars of the offence were that on the 5<sup>th</sup> day of March, 2009 at Keroka Township in Masaba District he unlawfully assaulted **Kennedy Moturi** thereby occasioning him actual bodily harm. After a full trial the appellant was convicted and sentenced to 18 months' imprisonment. This appeal is against sentence only.

Mr. Nyambati for the appellant submitted that his client was 19 years old when he committed the offence. He was attending college. There is evidence that he is asthmatic. In his view, the appellant ought to have been sentenced to community service. He urged the court to allow the appeal and reduce the sentence accordingly.

Mr. Mutai, Senior State Counsel, did not oppose the appeal.

The complainant told the trial court that the appellant hit him with a panga on his forehead, shoulder and on the right wrist. Although the appellant had alleged in his defence that the injuries to the complainant were occasioned accidentally, the trial court found that he had deliberately committed the offence. The appellant is a first offender and was remorseful. He has been in jail since 18<sup>th</sup> February, 2010. I believe he has been punished sufficiently. Consequently I allow this appeal and reduce the sentence to the period already served. The appellant is set at liberty unless otherwise lawfully held.

**DATED, SIGNED AND DELIVERED AT KISII THIS 13<sup>TH</sup> DAY OF JULY, 2010.**

**D. MUSINGA**  
**JUDGE.**

**13/7/2010**

Before D. Musinga, J.  
Mobisa – cc  
Mr. Mutai for the state  
Mr. Kaburi HB for Mr. Nyambati for the Appellant  
**Court:** Judgment delivered in open court on 13<sup>th</sup> July, 2010.

**D. MUSINGA**  
**JUDGE.**