KEN/6

53

C.O.
17939

GOVERNOR
NORTHEY

1921

12TH APRIL

ast previous Paper.

/17685

POSITION OF INDIANS

SEGREGATION AT NAIROBI

efuse to meet Nairobi Municipal Council. Conference
in C.O. tel 11th January and C.O. 139 now agreed
d for 3rd May and Resolutions will be telegraphed.
sites suitable for workers' Indians being
outside present municipal area in southern end of
Reserve to S.W. of Nairobi which think will be
able. Consider essential retain segregation in
residential areas

L. Hollis (for notes)

Send Despatch for the
Conference of 3 May.

[illegible]

[illegible]

[illegible]

[illegible]

xt subsequent Paper.

[illegible]

(96404) Wt. 14185/34 Gp. 129
1501171 23646.22

Sir Dawe

We know nothing of this case except that the Gov. told us in [illegible] that W. H. Howard who was engaged locally for a period by temporary appointments as a Stock Inspector in the Vet. Dept., had his engagement terminated 26 Feb. 1921.

We have had no report of his death, & this appears to confirm (what we [illegible] naturally suppose) that he was not in Govt. service when he died.

In the circs there can of course be no pension for Mrs Howard from Govt. funds. It is not quite clear [illegible] what [illegible] wants [illegible] from Administrator-General.

[illegible] Perhaps it wd. be [illegible] for [illegible] to reply [illegible] the position, as we know it [illegible] & [illegible] what [illegible]

81

No. 6.

(From the Minutes of the High Court of East Africa at Nakuru.

Herbert Edward Harries.....Appellant.

versus

.....Respondent.

JUDGMENT:-

This Appeal is against a sentence of three months Rigorous Imprisonment imposed by the High Court of East Africa for an offence of simple hurt of which the Appellant was convicted by a Jury.

The principle which this Court conceives to be proper to apply in cases in which it is asked to reduce sentences on the ground of their severety is as follows:-

Is the sentence so severe having regard to all the facts as to amount to a miscarriage of justice. If not then the Court should not interfere with the discretion given to the Court of first instance to impose such sentence as it thinks fit within the limits laid down by law. The facts are that the Appellant saw the [illegible] on the 4th June chasing his pigs. The Appellant picked up a piece of [illegible] (Exhibit A) with which it is inferred that the Complainant has been belabouring the pigs. One dead pig was recovered and another was so badly beaten that it could not get up. Prior to this date a sow had been badly hurt and the warning was issued to the boys

that

...at there must be no crying or kicking or the like.
The Appellant was not ... angry and tried but failed
to catch the boy. On the ... the Appellant caused
the b... to be brought before him and was explained that
he was to be beaten. As he was the boy's brother refused
to hold him during the beating. The boy was tied up in
a stooping position and the beating started. The boy
threw himself about so much that after a few ... it
was necessary for Kariuki to hold him down and the beating
continued with a kiboko (Exhibit B) It was the Appellant's
intention to give 20 strokes but he desisted when he saw
blood flow which was after the 17th stroke. His above
version of the facts is taken from the Appellant's own
evidence. He went on to say that the boy is dumb and he
is presumably deaf because instructions were given him
by signs. According to Mahinu Kariuki's evidence the
beating was more severe. He said that 100 strokes were given
over the body body and arms the eyes and head. The medical
evidence shows that the boy was admitted to hospital on the
15th of January in a collapsed condition. There were abra-
sions over his buttocks shoulders and arms and a bruise over
the left eye. His lips were bruised and the lower part
of his back. The top of his head was cut. The medical
witness Dr. Kilbey stated that the marks over the buttocks
and shoulders might have been caused by kiboko these on the
lips and eyes by a blunt instrument he did not think could
have been caused by a kiboko neither could the mark on the
head have been so caused. The Dr. could not state the
number of kiboko marks as testified by the kiboko however
caused serious injury and was sufficient to account for the
boy's condition when admitted at the Hospital. The boy was
in hospital until the 15th of July he was discharged but
readmitted

readmitted to the same day as there was still suppuration under the scab of the kiboko marks. He was finally discharged from hospital on the 3rd of August but had then contracted smallpox which kept him therefor a further four weeks. Dr. [illegible] examined the boy after and pronounced him to be deaf. He was also deaf. He appears to be a lad of low intelligence and would be unable to look after his own wounds. The boy was not at that time in a condition to walk home for he was ill days after his discharge from hospital.

The jury acquitted the [illegible] of the charge of maliciously causing grievous bodily harm with which he had been charged and convicted him of causing simple bodily harm to which charge he had in fact pleaded guilty, adding as a rider that there was intense provocation. The learned Judge (Sh[illegible]) wrote a judgment dealing with the [illegible] and [illegible]ng, treating as excessive and immoderate and [illegible] seems the sentence of imprisonment he imposed.

We are asked to find that the flogging was excessive or immoderate and that the sentence is also immoderate. It has been argued that if the Jury had considered the flogging excessive they would have found the [illegible] guilty of grievous bodily harm but as the learned Crown Counsel has stated grievous bodily harm is a technicality depending on the nature of the [illegible] resulting from the unlawful act. The rider of the Jury appears to this Court to refer to the Appellant's evidence relating to the killing of one pig and to the injuries [illegible] on the other pigs. If the Appellant had taken the law in his own hands there might be something to [illegible] for him but he ignored the tribunals of this country set up for dealing with such matters and after pleading on it it deliberately inflicted the flogging to the [illegible]

of

to take into consideration that
serious hurt in each of which
of simple hurt the punishmen
to believe that a fine would be
Appellant. But we are not
with the
learned Crown Counsel
out the
that these
sentences referred to
committing similar offences.
a deaf mute apparently of
he had been for some
employ
facts.

We agree entirely
Appellant's
below and we
all the facts
Appeal is dismissed.

J. Barth.

1951.