**IN THE COURT OF APPEAL OF BELIZE, A.D. 2005**

**CRIMINAL APPEAL NO. 35 OF 2004**

**BETWEEN**

**DIRECTOR OF PUBLIC PROSECUTIONS** **Appellant**

**v.**

**MEHETIBEL SLUSHER** **Respondent**

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**BEFORE:**

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| **The Hon. Mr. Justice Mottley** | **-** | **President** |
| **The Hon. Mr. Justice Sosa** | **-** | **Justice of Appeal** |
| **The Hon. Mr. Justice Carey** | **-** | **Justice of Appeal** |

**Ms. Cheryl-Lyn Branker-Taitt for appellant.**
**Mr. Hubert Elrington for respondent.**

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**14 June & 18 October 2005.**

**CAREY, JA**

1. This was an application for leave to appeal pursuant to sections 49(1)(c) and 49(2)(c) of the Court of Appeal Act, Chapter 90 at the instance of the Director of Public Prosecutions against a sentence of a fine of Five Thousand Dollars and in default five years'

imprisonment imposed by Lucas J on the respondent for the offence of dangerous harm. We treated the application as the hearing of the appeal, set aside the sentence and substituted a sentence of two years' imprisonment. We promised to put our reasons in writing. These are set out hereunder.

2. The short facts are as follows: On 11 July 2004 the respondent used a machete to inflict a 6 inch long injury to the left parietal area involving skin, subcutaneous tissue, the muscular sheath and a corresponding indentation in the skull of Kimberly Myers, her niece. She also suffered a defensive injury to the dorsal aspect of her right hand.

3. This incident stemmed from an altercation between Kimberly Myers and one Tanya during which they fought and had to be parted. The respondent and one Delita Chavez came outside their house at this time and Delita Chavez, who had a machete, threw it to Tanya and instructed her to chop Kimberly Myers. In the event, the machete was taken from her by Tanya's boy-friend to whom Kimberly complained about the fight and that Delita Chavez had thrown the machete to Tanya. Then the respondent intervened to say, "no Delita, no Delita at all" and proceeded to "chop [her] in [her] face". In protecting herself from another chop, she received a second wound on her [right] wrist.

4. This was a wholly unprovoked attack on the young woman, her niece and can only be described as an altogether vicious one.

5. On behalf of the Crown, it was argued that the sentence imposed was unduly lenient in circumstances where no remorse was shown, and the injury amounted to dangerous harm. Counsel put before us eight cases where the charge was the same and, save for two, where fines were imposed, the average of the sentences was three years.

6. In imposing sentence, a court is entitled, indeed obliged in performing a balancing exercise, to balance the seriousness of the crime with any mitigating factors which can properly be put in the scale. If, of course, the accused pleads guilty to the charge, that is a matter of some weight to be urged in favour of the accused. We are unable to discover in the learned trial judge's comments in the course of sentence, what he used as mitigating the serious penalty which was warranted by the crime. The trial judge was told by counsel in his address in mitigation of sentence that the incident was a demonstration of loss of self-control in a moment of "anger or aggravation". The defence advanced at the trial was a denial of the charge.

7. The respondent is fortunate that the offence charged was not attempted murder. She aimed not one but two blows at the victim.

She is a woman of mature years, a mother, with adult children. In our opinion, there were no mitigating factors urged before the trial judge which could justify the imposition of a fine. We agree with counsel for the Crown that the sentence of a fine was unduly lenient. We must express our surprise that having imposed a fine, it was thought fitting to impose a term of five years' imprisonment in default of payment. As there was no guarantee that the fine would be paid, it is a little odd that a term of five years in default was thought consistent with the leniency which was being extended to the respondent. The mitigating factor which we thought could properly be prayed in aid was her age, viz. 53 years; we used that fact as a discount in her favour to reduce the sentence below the tariff mean.

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**MOTTLEY P**

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**SOSA JA**

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**CAREY JA**