



IN THE HIGH COURT OF KENYA AT KIAMBU

CORAM. D. S. MAJANJA J.

CRIMINAL APPEAL NO. 57 OF 2017

BETWEEN

NJAU KARANJA..... APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal against the original conviction and sentence dated 8th August 2014 in Criminal Case No. 1549 of 2014 at the Magistrate's Court at Kiambu before Hon. D. K. Mochache, PM)

JUDGMENT

1. The appellant **NJAU KARANJA** was charged with the offence of causing grievous harm contrary to **section 234** of the **Penal Code (Chapter 63 of the Laws of Kenya)**. The particulars of the offence are that on 10th May 2014 at 4.00pm at Karuri, the appellant did maim **JAMES KARANJA GAKURU**. He was convicted and sentenced to 10 years' imprisonment. He now appeals against conviction and sentence.
2. The thrust of his appeal are set out in his grounds of appeal and written submissions are that the prosecution failed to prove the offence beyond reasonable doubt. He complained the trial magistrate did not consider the evidence of the doctor who filled P3 medical form and degree of the injury set out in the charge sheet. He submitted that the trial magistrate overlooked his defence that there was a grudge between him and the complainant over land. Finally, the appellant submitted that the sentence was harsh and excessive.
3. The respondent opposed the appeal and supported the conviction. It submitted that the prosecution proved the elements of the offence of causing grievous harm beyond reasonable doubt.
4. The prosecution case was supported by 5 witnesses. James Karanja Gakuru (PW 1) testified that the appellant was his father's youngest brother. He was informed that on 10th May 2014, surveyors were coming to the area where their property was situated to demarcate land needed to construct a road. At about 4.00pm he went to meet his other uncle, Joshua Mungai (PW 3) before they went to see what was happening at the site. While at the site, the appellant came and demanded to know what was happening. He demanded that the exercise should not proceed. He went back to his house came back with a sharp panga, approached and aimed it at PW 1 and cut him. PW 1 lifted his left hand and he was also cut on the palm. PW 1 started bleeding and shouting for help.
5. James Karanja Mungai (PW 2), a nephew to the appellant and a cousin to PW 1 recalled that on the material day at about 4.00pm he heard PW 1 screaming. When he went to find out what was happening, he saw the appellant wrestling with PW 1 while holding a panga. PW 1 was lying on the ground while the appellant was kneeling on him. He quickly took the panga while the appellant ran away with PW 1's phone and spectacles. He took PW 1 to his house, administered first aid and took him to the police station to report the matter and then to hospital.
6. PW 3 stated that while he was at the site with PW 1, the appellant came to ask what was happening and demanded that the surveyors should leave. The appellant went to his house for a panga. When he came back he dashed to PW 1 and cut him on the hand. PW 3 started screaming causing people, including PW 2, who disarmed the appellant, to come. The appellant ran away.
7. Richard Munene (PW 4), was a clinical officer at Karuri Health Centre produced P3 medical form which he had signed on 12th May 2014 after examining PW 1. He confirmed that he treated PW 1 on 10th May 2014. He noted that PW 1 had sustained injuries on the left hand, middle finger and right hand. He assessed injuries to be maim because of the deep cut wound on the medial aspect of the left hand which affected some tendons hence inability to move the index and middle finger.
8. The investigating officer, Corporal Benson Bokose (PW 5) confirmed that the incident was reported at Karuri Police Station on 10th May 2014 at 10.00am by PW 1. He investigated the case and took witness statements and arrested the appellant.

9. The appellant in his sworn defence denied the offence. He stated that the case was a land dispute disguised as a criminal case. He told the court PW 1 and his brother had variously sold their land, charged the land to the banks and that they had given the land to government and had been compensated hence none of them was entitled to the land. He denied that he was armed on the material day.

10. I have considered the totality of the evidence and I am satisfied that PW 1 was assaulted by the appellant in broad daylight. The appellant was not a stranger to him as he was his uncle. PW 1 and PW 2 stated that the appellant specifically went to collect the panga from his house before assaulting PW 1 which shows that the assault was deliberate. Further, the incident was witnessed by PW 2 and PW 3 whose evidence was consistent with that of PW 1. PW 1's injuries were confirmed by PW 4. All the evidence of injuries was substantiated by blood stained trouser and shirt which PW 1 was wearing and which were produced in court. The appellant's defence was a mere denial. He complained that PW 1, PW 2 and PW 3 were involved in acts of forgery to deny him land but this alone did not give the appellant the right to attack PW 1.

11. As regards the nature of the injuries, section 4 of the Penal Code defines *Harm* and *Grievous harm* as follows;

“grievous harm” means any harm which amounts to a maim or dangerous harm, or seriously or permanently injures health, or which is likely so to injure health, or which extends to permanent disfigurement, or to any permanent or serious injury to any external or internal organ, membrane or sense.

“harm” means any bodily hurt, disease or disorder whether permanent or temporary.

12. PW 4 testified the nature of the injury was such that the injuries inflicted by the appellant with a panga resulted in cut tendons and which affected PW 1's ability to move the middle and index finger. I find that this kind of injury was not only a serious injury but one that led to permanent disfigurement. The injury therefore fell within the meaning of grievous harm.

13. Having analyzed the evidence as required by the first appellate court, I find the prosecution proved that the appellant assaulted PW 1 and caused him injuries. I have no reason to depart from the findings of the learned trial magistrate.

14. As regards the sentence, the trial magistrate took into account the fact that the appellant was unprovoked, that he had assaulted other witnesses before and that he was a violent person and had even assaulted PW 2. She also noted that the appellant was 58 years old.

15. Counsel for the appellant in the written submissions submitted that the court should also consider other cases where the court had sentenced a person in similar circumstances and find that the sentence of the 10 years' imprisonment was harsh and excessive. For example, in *Collins Ochieng Omondi v Republic HB HCCRA No. 26 of 2015 [2016] eKLR*, the appellant cut the complainant's hand and was sentenced to 6 years' imprisonment while in *Bernard Ochieng Opiyo v Republic HB HCCRA No. 33 of 2015 [2015] eKLR* where the appellant cut the complainant's hand and was sentenced 5 years' imprisonment. Considering the cases cited and the factors set out by the trial magistrate, I find the sentence of 10 years harsh and I quash it. The appellant has been in custody since 16th May 2014 when he was arraigned.

16. I affirm the conviction. I allow the appeal only to the extent that the sentence of 10 years' imprisonment is hereby quashed and substituted with a sentence of **time served**. The appellant is therefore set free unless otherwise lawfully held.

SIGNED AT NAIROBI

D.S. MAJANJA

JUDGE

DATED and DELIVERED at KIAMBU this 29th day of JANUARY 2020.

J. N. ONYIEGO

JUDGE

Appellant in person.

Mr Kasyoka, Prosecution Counsel, instructed by the Office of the Director of Public Prosecution for the respondent.