



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**CRIMINAL APPEAL NO.70 OF 2017**

**REPUBLIC.....PROSECUTION**

**VS**

**PAUL MITHIKA MINYORI.....ACCUSED**

**JUDGEMENT**

Paul Mithika Minyori preferred this appeal against the judgment in Tigania PMC CR.C. No. 1576 of 2014 which was delivered on 12<sup>th</sup> June 2017 convicting him of the offence of assault causing actual bodily harm contrary to section 251 of the penal code. The trial court sentenced the accused to 18 months imprisonment.

As is required of the 1<sup>st</sup> appellate court, I have reconsidered the grounds of appeal as against the evidence of the prosecution and the appellant in the lower court and do find that the trial magistrate effectively evaluated the evidence and relied on it to find appellant guilty. PW2 witnessed appellant assault the complainant who accused him of stealing his tomatoes Appellant complainant was treated and P3 form filled confirming the injuries sustained.

A part from merely denying having committed the offence appellant didn't explain where he was on the material day he is alleged to have assaulted the complainant. He didn't say which boundary dispute he had with complainant sister and he didn't question complainant or the investigating officer concerning the alleged boundary dispute. I do find like the trial magistrate that the appellants claim in his defence is defeated by the evidence of the other prosecution witnesses and is not sustainable.

The conviction was well founded on laws and evidence and is upheld concerning whether sentence was excessive, the complainant bodily harm. The injury was slight swelling and tenderness of the posterior neck. The sentence was lawful and within provision of law but I will vary the sentence to a fine of Kshs. 10,000/= in default, 6 months imprisonment in consideration that injuries were minimal. However to make good the injuries suffered the complainant will be restituted under Section of penal code with Kshs 20,000/= as damages. The Kshs 20,000/= to be paid to the complainant out of the cash bail deposited by appellant in court.

**HON. A.ONG'INJO**

**JUDGE**

**Judgment Delivered Dated and Signed in court on 31<sup>ST</sup> day of JANUARY 2019**

**In the presence:**

C/A: Kinoti

Appellant: Mr Ojiambo Advocate Appellant.

State: Mrs Mwathi for state

**Mr Ojiambo**

We wish to be supplied with a copy of the judgement.

**Order**

Copy of judgment to be supplied upon payment of copying charges.

**HON. A.ONG'INJO**

**JUDGE**