



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

CRIMINAL APPEAL NO.111 OF 2018

(Being an appeal arising from the conviction and sentence in Kitale Chief Magistrate's Court in Criminal Case No. 1162/2018 delivered by Hon. P. Biwott SPM)

PETER KIMANI NJOROGE.....APPELLANT

VERSES

REPUBLIC.....RESPONDENT

JUDGEMENT

1. The Appellant was charged with the offence of **Grievous harm contrary to Section 234 of the Penal code**. The particulars of the charge were that **on the 18th day of February, 2018 at Namanjalala area within Trans Nzoia County unlawfully did grievous harm to JOSEPH MATUMBAL**.
2. The Appellant after full trial was convicted and sentence to 5 years imprisonment hence this appeal. He has raised several grounds of appeal which generally attacks the findings by the trial court to have been not appropriate considering the evidence tendered by the prosecution.
3. The summary of the evidence is that PW1, the complainant told the trial court that he had leased land from one Alexander and as he walked with him on the material day at around 6.40 pm they met the appellant on the way. He greeted him and instead of answering him he drew a panga and cut him. He missed his head but instead cut him on the hands causing serious injuries to his fingers. He was taken to Kitale district hospital where he was treated. He said that he did not understand why the appellant cut him without any provocation.
4. **PW2 JOEL TOROITICH KIPTOO**, a Clinical Officer from Kitale Referral hospital examined the complainant after 15 days. He assessed the injury as harm.
5. **PW3 PETER ALEXANDER IRAMOYA** testified that he had leased his land to pw1 and on the material day he went for the payment. Along the way as they walked with him they met the Appellant who was greeted by PW1. Instead of answering him he cut him on the hand a panga. He rushed him to the hospital and later reported the matter at the police station.
6. **PW4 P.C MUTHIE** from Kitale police station carried out the investigation, had the Appellant arrested and preferred charges against the Appellant.
7. When placed on his defence the appellant gave sworn evidence denying the charge. He said that he did not know the complainant. He said he was home on the material day. He accused the complainant of disliking his church. He said the arrest was framed up charges and the complainant and his witnesses are tribalists. **AN ANALYSIS AND DETERMINATION**
8. Having perused the proceedings as well as read the rival submissions by the learned State Counsel and the Appellant, the duty of this court is to evaluate the evidence on record and come up with a fresh and independent finding. **See OKENO VS. REP.(1973) E A 32.**
9. There is no doubt that the complainant was attacked and he sustained serious hand injuries which affected the use of his fingers. The injury was classified as grievous harm. Who then caused the injury?
10. The court has perused the evidence of PW1 and PW2 critically. Both were at the scene that evening around 6pm. The Appellant in his defence acknowledge that he saw the complainant. Both pw1 and 2 stated that the appellant drew his panga and cut the complainant when he greeted him. Why did he do so? Nobody knows as it did not come out of the proceeding clearly.
11. There was no other place the complainant sustained the injury. The appellant suggested in his submissions that it was PW2 who injured him while they fought and that he was being framed. I do not find any evidence to support this line of reasoning. If this is true as stated by

the appellant then there should have been other independent witness called by him.

12. Neither do I find any evidence that the complainant did not like his church as he brews alcohol. There was no evidence that the complainant and his witnesses were tribalists or at all.

13. The incident took place in broad daylight and there was no case of mistaken identity. Although the appellant stated in his evidence in chief that he did not know the complainant he charged during cross examination and said that he knew him.

14. The sum total of my finding is that there is no merit in the appeal. The issues raised in the submission concerning the dates of the injury, reporting to the police and the filling of the P3 form are periphery in nature. If the appellant reported to the police the incident earlier than the complainant, then the same was just mentioned in the proceedings. There was no evidence of such report and no occurrence book details produced.

15. The filing of the P3 form was done after 15 days and contrary to what the appellant states the same can be done at any time. The 15 days was after the incident and not as he suggested the date of the incident.

16. In the premises this appeal is hereby dismissed.

Dated signed and delivered at Kitale this 7th day of August, 2019.

H. K. CHEMITEI

JUDGE

7/8/19

In the presence of:-

Mr Omoria for Respondent

Appellant – present

Court Assistant – Kirong

Judgment read in open court.