

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL APPEAL NO. 22 OF 2017

HEZRON NDEGE OMOLLO.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Appeal from the original conviction and sentence of Hon. J.P Nandi – SRM dated 15th March 2016 at the Principal Magistrate’s Court at Oyugis in Criminal Case No. 87 of 2015)

JUDGMENT

1. The appellant, HEZRON NDEGE OMOLLO, was charged and convicted of 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 were that on 10th February 2014 at Kodera Location in Rachuonyo South District of Homa Bay County he unlawfully did grievous harm to B O. He was sentenced to fifty (50) years imprisonment.
2. At the hearing of the appeal the appellant informed the court that he did not deny cutting the complainant but that he was attacked. He prayed for leniency as the sentence was harsh.
3. I have considered the evidence on record and it is not true that the appellant was attacked as he states. B O O (PW 1) was a child in class four and he was attacked by the appellant as he was cutting grass in their compound. Nancy Akinyi Otieno (PW 2) confirmed that she is the one who told PW 1 to go and slash grass after he came from school on the material day. She saw the appellant chasing PW 1 hitting him with a panga. When the appellant saw her, he chased her away.
4. Titus Ochieng’ Ojwang’ (PW 3) who was nearby heard PW 1 screaming and calling for help and when he went outside his house, he saw the appellant chasing PW 1. He also saw the appellant cut PW 1 on the hand as he tried to shield himself. Likewise Eunice Okoth (PW 4) also testified that when she heard noise outside, she saw the appellant chasing PW 1.
5. After PW 1 was cut, he was rushed to Rachuonyo District Hospital for treatment. The matter was also reported at Oyugis Police Station. The clinical officer, PW 6 produced the P3 medical report. She examined PW 1 and noted that his left arm had been cut off at the upper part with a sharp object. She classified the injury as maim.
6. In his unsworn statement the appellant merely denied the offence.
7. The testimony of all the witnesses I have outlined show that it is the appellant who attacked PW 1 in broad daylight. He was thus properly convicted of causing grievous harm as PW 1’s arm was completely cut off. I therefore affirm the conviction.
8. As regards sentence, I am aware that maximum sentence for grievous harm is life imprisonment. I find the sentence fifty (50) years imprisonment on the higher side considering the sentencing trends in other cases for example robbery with violence. I therefore quash the sentence of fifty (50) years imprisonment and substitute it with twenty (20) years imprisonment.

Dated and delivered at Kisii this 27th day of September, 2018.

D.S MAJANJA

JUDGE

Mr. Otieno, Senior Prosecution Counsel, instructed by Office of Director of Prosecutions.

Appellant in person.