



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KITALE**

**CRIMINAL APPEAL NO. 18 OF 2017**

**(Being an appeal arising from conviction and sentence in Kitale**

**Chief magistrate's court in Criminal case NO. 4257 of 2016**

**delivered by P. Biwott Senior Principal Magistrate on 20/2/2017)**

**EDWIN WAMALWA KANGALA.....APPELLANT**

**VERSUS**

**REPUBLIC.....PROSECUTOR**

**J U D G M E N T**

1. The appellant was charged with the offence of **Grievous harm contrary to section 234 of the Penal Code**. The particulars of the offence were that **on the 9<sup>th</sup> day of October 2016 at 1.00 pm in nyasi farm within Trans Nzoia County unlawfully did grievous harm to Noval Nekesa Kisongochi**.
2. The appellant was convicted and sentenced to 5 years imprisonment hence this appeal. The summary of the proceedings at the trial court were clear and straight forward.
3. **PW1 the complainant** testified that the appellant was her brother in law. On the material day at around 1.00 pm he came to their house, where they had been housing him for a while. He went inside the house and removed his items with the intention to moving away. The complainant was outside the house. Suddenly the appellant drew a knife and began attacking her. She sustained serious bodily injuries. He was rushed to Matunda hospital where she was treated. The matter was reported at Kiminini patrol base. a P3 form was issued and filled.
4. Meanwhile, the complainant's husband who was inside the house during the attack came out when he heard the appellant's cry and managed to give chase and apprehended the appellant with the assistance of the members of the public. They took him to Kiminini patrol base. PW2 the appellant's husband testified that he saw the appellant attack the complainant. He identified the knife used by the appellant.
5. **PW3 Kimutai Rotich** the clinical officer from Matunda hospital produced the P3 form in respect to PW1. The wound was stitched and he opined that it had been caused by a sharp object.
6. **PW4 CPL Bishar Mohammed** from Kiminini patrol base rearrested the appellant after being brought by the members of the public and upon interrogating him and recording the evidence from the witnesses preferred charges against him. He also produced the knife used to attack the complainant.
7. When put on his defence the appellant gave unsworn evidence denying the charge. He said that on the material day he had gone to work at Kiminini. That the complainant and her husband were to move out of the house once the same was constructed by their father. He said that he was framed in the case.
8. I have perused the proceedings as well as the parties written submissions.
9. The gist of the appellant's grounds of appeal are generally an attack on the fact that there was no sufficient evidence to have him convicted.
10. On the contrary I find the evidence presented by both PW1 and PW2 watertight. Their relationship was clear, sister and brother in law respectively. He did not deny that they had been staying together in one house. More particularly I did not see any evidence that there was

a collusion on the part of PW1 and PW2 to fix the appellant.

11. The knife produced was the same one used to stab the complainant. He was immediately arrested and taken to the police post.

12. His defence was a sham to say the least. Even if they had their family differences the action taken by the appellant was heinous. He intended to harm her sister in law.

13. This appeal is devoid of merit and its hereby dismissed.

14. I notice however that the appellant was in custody all through and that he has served a sufficient period in prison. In the premises I do order that he be set free unless lawfully held.

**Delivered, signed and dated at Kitale this 27<sup>th</sup> day of September, 2018.**

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**H.K. CHEMITEI**

**JUDGE**

**27/09/18**

**In the presence of:**

**Mr. Kakoi for the Respondent**

**Appellant – present**

**Court Assistant – Kirong**

**Judgment read in open court**