



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MARSABIT**  
**CRIMINAL APPEAL NO.30 OF 2016**  
**SHANO GACHO BIQE.....APPELLANT**  
**VERSUS**  
**REPUBLIC.....RESPONDENT**  
*( From the original conviction and sentence in criminal case No. 340*  
*of 2016 of the Senior Resident Magistrate’s Court at Marsabit*  
*by Hon. Boaz M. Ombewa – Senior Resident Magistrate)*

**JUDGMENT**

The appellant, **SHANO GACHO BIQE**, was convicted for the offence of assault causing actual bodily harm contrary to section 251 of the Penal Code.

The particulars of the offence were that on 10<sup>th</sup> June 2016 at **Stage 44** in Marsabit Central sub County of Marsabit County, he unlawfully assaulted **ABDIKADIR ADAN** occasioning him actual bodily harm.

He was sentenced to serve five years imprisonment. He has appealed against both conviction and sentence.

The appellant was in person. He raised the following grounds of appeal:

1. That the trial suffered procedural irregularities.
2. That the learned trial magistrate erred in law and in fact by convicting him without the production of the weapon of the offence.
3. That the learned trial magistrate erred in law and in fact by convicting him on the basis of a single witness.
4. That the learned trial magistrate erred in law and in fact by convicting the appellant on the basis of doubtful, contradictory and inconsistent evidence.

The state opposed the appeal through Mr. Chirchir, the learned counsel.

The facts of the prosecution case were briefly as follows:

Prior to the incident giving rise to this case, the complainant had just recorded a statement with the police against the appellant over an issue of malicious damage to property. The appellant found him at his place of work and punched him on the nose. He told him that this was because he had recorded a statement against him.

The appellant denied any involvement in the offence.

This is a first appellate court. As expected, I have analyzed and evaluated afresh all the evidence adduced before the lower court and I have drawn my own conclusions while bearing in mind that I neither saw nor heard any of the witnesses. I will be guided by the celebrated case of **OKENO vs. REPUBLIC [1972] EA 32**.

*I perused the record and I am satisfied that there was no procedural irregularities. This was just a statement made without any basis.*

*The evidence on record was very clear that the appellant used his fist to hit the complainant. It is cheeky on his part to demand that the weapon used in committing the offence to be produced.*

*It is trite law that a fact can be proved by the evidence of a single witness . This is subject to well known exceptions. This case does not fall under the exceptions. In **KIILU & ANOTHER vs. REPUBLIC [2005] 1 KLR 174** the Court of appeal observed:*

***Subject to certain well known exceptions, it is trite law that a fact may be proved by testimony of a single witness...***

*The complainant, **Abdikadir Adan** (P.W 1) testified that after he had recorded a statement against the appellant in a malicious damage case, the latter found him at the Bus Stage and punched him on the nose. This was the gist of the evidence of **Hassan Adan Jasso** (P.W2). He confirmed the reason why the complainant was battered.*

***Dr. Sereti** (P.W5) examined the complainant and established that when he was hit on the nose, he bit his tongue.*

*Though the appellant contended that he was convicted on the evidence of a single witness I find that this was not so. I also did not find any contradictions that were alleged to exist. He was convicted on the basis of sound evidence.*

*Though the appellant contended that he had no previous conviction, that was not true. He had other four previous convictions which were relevant. The convictions were between 2015 and 2016. The learned trial magistrate cannot be faulted in meting out the sentence he did. The appellant has to deliberately and clearly depart from the criminal world for him to benefit from leniency of the court. I am not persuaded to interfere with the sentence meted by the learned trial magistrate.*

*In a nutshell, the appeal is dismissed.*

**DATED at Marsabit this 19<sup>th</sup> day of April, 2017**

**KIARIE WAWERU KIARIE**

**JUDGE**