



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KAKAMEGA**

**CRIMINAL DIVISION**

**CRIMINAL APPEAL NO. 34 OF 2017**

**BETWEEN**

**BERNARD SHIKALA .....APPELLANT**

**AND**

**REPUBLIC .....RESPONDENT**

**(Being an appeal from the original convictions and sentence of Hon. F.**

**Makoyo, RM dated 18<sup>th</sup> January 2017 at the Kakamega Chief Magistrate's**

**Court in Criminal Case No. 60 of 2015)**

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

1. This is an appeal by Bernard Shikala who was convicted of the offence of causing grievous harm contrary to Section 234 of the Penal Code. He was sentenced to pay a fine of Kshs. 50,000/= in default to serve 3 years' imprisonment.
2. The particulars of the charge were that on 29<sup>th</sup> September, 2014 at Kwirenyi Village, Kakamega East District within Kakamega County, the accused person unlawfully did harm Wilson Sango.
3. The prosecution case was that on 23<sup>rd</sup> February, 2015, Wilson Sengo (PW1) was walking home when the appellant attacked him with a panga and bit off his earlobe. PW1's cries led to his wife, Adeline Amwamda (PW2) coming over where she found the appellant biting PW1's ear. PW3, Hesborn Ingani witnessed both appellant and PW1 fighting and saw the injury to the ear.
4. In his defence, the appellant stated that he was the one who was attacked by PW 1 and he even got injured. His witnesses Wycliffe Mambiri (DW2) and Lydia Masitsa (DW) were not present at the scene.
5. I have considered the evidence of the prosecution and I am satisfied that the prosecution proved that the appellant assaulted the complainant. Whether the offence amounts to grievous harm depends on the assessment of injuries. In this case the P3 form was produced by the doctor or under section 77 of the Evidence Act. The trial magistrate did not make an assessment of the injury from what he observed. In the circumstances I allow the appeal and substitute the conviction with that of assault contrary to section 250 of the Penal Code.

6. Accordingly, the sentence is reduced to a 1-year imprisonment. The balance of the sentence shall be served under community service. The appellant is ordered released unless otherwise lawfully held.

**D.S. MAJANJA**

**JUDGE**

Dated and delivered at Kakamega this 30th day of August 2017.

**D.S. MAJANJA**

**JUDGE**

Appellant in person.

Mr Ng'etich, Senior Assistant Director of Public Prosecutions, instructed by the Office of Director of Public Prosecutions for the respondent.