

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

CRIMINAL APPEAL NO. 79 OF 2016

BETWEEN

CHARLES OMONDI ONYANGO APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal against the original conviction and sentence of Hon. R.M. Oanda, Ag. PM dated 8th March 2013 in Ukwala Magistrates Court Criminal Case No. 56 of 2015)

JUDGMENT

1. The appellant, **CHARLES OMONDI ONYANGO**, was charged with the offence of robbery with violence contrary to **section 296(2)** of the *Penal Code (Chapter 63 of the Laws of Kenya)*. The particulars of the offence were that on the January 2015 in Ugunja District, Siaya County, he robbed Michael Ochieng Oduor of a TECHNO Mobile Phone valued at Ksh. 2,000/= and sandal shoes valued at Ksh. 200/= and immediately before or after such time, he beat Michael Ochieng Oduor. The appellant was convicted and sentenced to death.

2. Michael Ochieng Oduor (PW 1) and Samuel Oduor Ochieng (PW 2) were at Tingwang Centre on 9th August 2015 when the accused arrived on a motor bike came and stopped where they were and proceeded to assault PW 1. PW 1 ran off and went to report the incident to his uncle. The incident was reported to the police station on 15th January 2015 according to the Investigating Officer (PW 4).

3. PW 1 was seen by the Clinical Officer (PW 3) on the same day and he noted that he had injuries on the cheek, a swelling with partial inability to clench his teeth. He noted the injuries as harm.

4. Although one PW 4 stated that the Complainant's TECHNO phone was recovered from the accused, he did not state when and how. The accused in his sworn statement merely denied the offence.

5. The incident took place at daytime and PW 1 and PW 2 knew the appellant. However, I hold that the offence of robbery with violence was not proved as it was not demonstrated whether the TECHNO phone was found with the accused. I therefore reduce the charge to one of simple assault contrary to **section 251** of the *Penal Code* which is a lesser and cognate offence.

6. The appeal is allowed to the extent that the appellant to be convicted of simple assault contrary to **section 251** of the *Penal Code* and sentenced to 3 years' imprisonment. However, he is hereby released to serve the balance of his sentence on probation.

DATED AND SIGNED AT SIAYA THIS 22ND DAY OF DECEMBER 2017.

D. S. MAJANJA

JUDGE

Appellant in person.

Ms Odumba, Prosecution Counsel, instructed by the Officer of the Director of Public Prosecution for the

State

Court Assistants: L. Odhiambo and L. Atika