



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

CRIMINAL APPEAL NO. 78 OF 2013

JACKSON BONNY ABOK.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

The appellant was charged with one count of grievous harm contrary to section 234 of the Penal Code. The facts were that on the 16-12-2010 at Siany area Kajimbo Sub location in Nyakach District within Kisumu County unlawfully did grievous harm to Peter Onyango Wadhare.

The brief facts were that on the material day at around 7.10 a.m the complainant went to brickyard where he wanted tree stumps to be uprooted. The said parcel of land where the trees were belonged to one Sabianus Muga his uncle who had died and left no beneficiaries.

While they were at the scene the appellant appeared and enquired what the complainant and the two others were doing in the shamba. Suddenly he attacked the complainant using a panga which he pulled from his coat.

He viciously caused serious injuries to the complainant. The rest of the witnesses could not help much as they were not armed. The complainant's wife heard and she screamed forcing the appellant to flee away. The complainant was then taken to Nyabondi Mission Hospital where he was admitted for 1 month and 18 days.

PW2 Jane Mueni Kimanzi, the complainant's wife went to the scene and was all along suspicious as previously her co-wife's children had been chased away by the appellant. The witness went ahead to describe how the complainant was attacked by the appellant using a panga.

John Omundo Muga also known as “Bro” PW3, was present at the scene and saw the appellant attack the complainant. He told the court that the complainant told the appellant that if he had any complainant then he ought to go to court.

PW4 P.C. Jackson Omamba, upon receiving instructions from Sgt E Kasiba went to investigate the assailant. He saw two reports registered in the O.B No. 8 was in respect to the appellant. He learned that the complainant had been taken to Nyabondo Mission Hospital and he went and found him there. He further went to the scene where he saw the tree stumps.

PW5 Julius Apul Wathare, the brother of the complainant equally saw the appellant assault the

complainant using a panga. He ran away as the appellant attempted to attack him too.

PW6 Willy Kitur, the clinical officer produced the P3 form which showed the extent of the injuries suffered by the complainant. He classified them as maim.

In his sworn defence the appellant told the court that he found the complainant making bricks in the shamba which earlier on he had been allowed to work on by the area chief. The three people who came and attacked him included the complainant. He was hit with a stone on the chest and he fell down, he was also attacked using an axe which injured his hand. The appellant then took off and went to Ogoro police patrol base where he was advised to go to hospital. He went to Nyanbondo District Hospital and later to New Nyanza Provincial General Hospital.

His witness **DW2 Apollo Otieno Okidno** told the court that he had gone to make bricks that morning. He saw the complainant, his wife, Julius and another attack the appellant. The appellant then went with him to the police station and were advised to seek treatment first.

DW3 Dr. Omenga Peter, produced the P3 form which he had earlier on filled in respect to the appellant. He had sustained a deep cut wound on the left forearm.

Finally, **DW4 Jonathan Ogire**, the chief Oboth location told the court that there was an earlier agreement between the parties where the appellant had been granted 4 months to make bricks from the suit parcel land. He did not however witness the incident.

The appellant was then convicted and sentenced to 5 years imprisonment hence this appeal. His homegrown petition of appeal dated 6-6-2013 is composed of 6 grounds which Mr. Adiso learned counsel for the appellant condensed them and argued together.

What is not in dispute is that there was a confrontation between the parties herein, namely the applicant and the complainant. The scene was at the late Muga's parcel of land. Both sustained injuries but it appears that the complainant injuries were more serious. The big question however is who caused the fracas. From the evidence on record there is sufficient consistency on the part of the prosecution witnesses. All of them saw the appellant remove the panga from his coat and attack the complainant severally. The axe the appellant is talking about belonged to PW5 which apparently the complainant tried to pick so as to defend himself.

The whole incident happened during daytime and there can be no incident of mistaken identity. All the parties involved knew each other. I do not therefore find that the appellant's defence sufficiently displaced the complainant's case. I do not see how the appellant can faint and at the same time manage to inflict such injuries upon the complainant.

Consequently I do not find this appeal meritorious at all. There was no provocation by the complainant at all. It was the appellant who went to the scene and caused the attack. His appeal is hereby dismissed.

Dated, signed and delivered at Kisumu this 17th day of November, 2014.

**H.K.
JUDGE**

CHEMITEI