



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KERICHO**  
**CRIMINAL APPEAL NO. 56 OF 2012**

**ROBERT KIBET LANGAT.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

*(Being an Appeal against the Conviction and Sentence by the*

*Honourable J.Kasam, Resident Magistrate at Sotik in*

*Criminal Case No. 936 of 2008 on 27.8.2012)*

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

1. **Robert Kibet Langat**, the appellant was charged and convicted of the offence of Grievous Harm contrary to **Section 234** of the **Penal Code** and sentenced to twenty (20) years imprisonment on **27<sup>th</sup> August, 2012**.

2. The State conceded the appeal on grounds that:

- i. There are inconsistencies in the evidence of PW1, PW2 and PW3.*
- ii. Exhibits were not produced.*
- iii. The investigating officer did not testify.*
- iv. Section 200(3) of the Criminal Procedure Code was not complied with.*

3. This being a first appeal, I have duty to reconsider and evaluate the evidence on record and arrive at my own conclusion.

**See (i) Okeno V R [1972] EA 32**

**(ii) Simiyu & Anor V R [2005] 1 KLR 192**

4. I have perused the evidence on record and I have arrived at the conclusion that there is no inconsistency in the evidence of PW1, PW2, PW3 and PW4.

The failure to call the investigating officer in itself is not fatal to the prosecution case. It depends on what evidence the investigating officer was coming to give to the court.

5. The case before the Magistrate's court was handled by two Judicial officers. Before the second Judicial officer took over the case, she did not comply with the Provisions of **Section 200** of the **Criminal Procedure Code** which is a mandatory requirement. Failure to comply with this mandatory procedure renders the whole trial a mistrial, and the conviction is vitiated and therefore set aside together with the sentence.

In the case of **EKIMAT V R [2005] 1 KLR 182** the Court of Appeal stated thus;

*1. It is true that where a conviction is vitiated by a gap in the evidence or other defect for which the prosecution is to blame, the Court will not order a retrial. But where a conviction is vitiated by a mistake of the trial court for which the prosecution is not to blame it does not follow that a retrial should be ordered.*

*2. A retrial should not be ordered unless the Court is of the opinion that on a consideration of the admissible or potentially admissible evidence a conviction might result. Each case must depend on its particular facts and circumstances but an order for the retrial should only be made where the interests of justice require it and should not be ordered where it is likely to cause an injustice to an accused person.*

6. Further in the case of **NJENGA & ANOR V R [2006] 1 KLR 18** the Court of Appeal also followed what it had stated in the **EKIMAT** case.

7. The appellant was convicted and sentenced on **27<sup>th</sup> August, 2012**. He has therefore only served two(2) years four(4) months out of the 20 years sentence imposed. Following what I have stated in paragraph 4 above, and upon consideration of the admissible or potentially admissible evidence, I find this to be a matter which should go for a retrial, as in so doing the interests of justice will be met.

I therefore set aside the conviction and sentence and order for a retrial.

Let the appellant appear before the Principal Magistrate Sotik on **24<sup>th</sup> December, 2014** for a fresh plea to be taken and the matter listed for hearing. The same should be heard and concluded within the next six(6) months.

**Dated, signed and delivered this 19<sup>th</sup> day of December, 2014**

**H.I. ONG'UDI**

**JUDGE**

**In the presence of :**

M/S Njenga for State

Appellant – present in person

Lagat – Court Assistant

Interpretation – English/Kipsigis