

REPUBLIC OF KENYA

High Court at Kakamega

Criminal Appeal 96 of 2012

VINCENT NGOME AUKO APPELLANT

V E R S U S

REPUBLIC RESPONDENT

(Appeal arising from the judgment of (MR. P. N. ARERI, R.M.) in the Chief Magistrate's Court Kakamega in Criminal Case No. 349 of 2010)

J U D G M E N T

The appellant was charged with the offence of grievous harm contrary to **Section 234** of the **Penal Code**. The particulars of the offence were that the appellant *on the 19th day of February 2010 at Mwebuke village, Shibuli sub-location, Kakamega Central district within Western Province, unlawfully did grievous harm to KENNEDY AYODI*. He was convicted and sentenced to serve **five (5) years'** imprisonment. the appellant's grounds of appeal are that the sentence is very harsh, the trial court did not consider the circumstances prior to and at the time of the commission of the offence, he is very remorseful for having committed the offence and that the victim was his neighbor.

During the hearing of the appeal the appellant simply urged the court to reduce the sentence as it is harsh. Mr. Oroni, state counsel, opposed the appeal and submitted that the appellant was positively identified by PW1 and PW2. The conviction is proper and the sentence is lawful.

The record of the trial court shows that five witnesses testified. **PW1, KENNEDY AYODI** was the complainant. On the 19th of February 2010 at about 5.00 p.m. he was heading to his home on an motorcycle and when he reached his house the appellant who was on a bicycle punched him on the head. PW1 stopped the motorcycle and the appellant started punching him. The appellant picked a piece of wood and hit PW1 on the head and hand. The appellant produced a knife and stabbed PW1 on the right hand and chest. PW1 lost consciousness and only found himself at the Kakamega Provincial Hospital theatre. PW1 knew the appellant as his neighbor. **PW2, SPETA KALEKHA ALWANGA** was at her house that day at about 5.00 p.m. She got information about the incident and went to the scene. She found PW1 lying down and the appellant was standing there. Members of the public went to the scene and PW1 was taken to hospital. PW2 saw the appellant holding a knife.

PW3, NICHOLAS CHIBOLE AMBANI, was at his home on the 19th of February 2010 when he heard about the incident at about 5.00 p.m. He went to the scene and saw PW1 lying down while the appellant was going away on a bicycle. He assisted in taking PW1 to hospital. According to PW3 the appellant was arrested by AP officers and a knife recovered from his pockets. **PW4, PC RAYMOND LIMO**, was stationed at the Kakamega police station and on the 19th February 2010 the appellant was taken to the station by AP officers. He re-arrested the appellant and investigated the case. According to PW4 PW1 gained consciousness at the hospital and he took his statement. **PW5, DR. JEREMIAH KINUTHIA** produced the P3 form that had been filled by **DR. NYIKURI**. According to the P3 form PW1 suffered stab wounds on the chest and right hand below the elbow. The doctor classified the injuries as grievous harm.

The appellant was put on his defence and in his sworn testimony denied committing the offence. He

stated that he is a casual labourer and he was arrested by AP officers and later charged with the offence.

It is clear from the evidence on record that it is the appellant who stabbed the complainant. Indeed the grounds of appeal admit that the appellant committed the offence. The only prayer by the appellant is that the sentence is harsh and that he is remorseful. Under **section 234** of the **Penal Code** the maximum sentence for causing greivous harm is life imprisonment. although the appellant states that he is remorseful he does not explain why he stabbed the complainant who is his neighbor. I do find that the sentence was proper in the circumstances. The complainant sustained serious injuries and the stab wound on the chest could have caused his death.

In the end I do find that the appeal lacks merit and the same is disallowed.

Delivered, dated and signed at Kakamega this 31st day of January, 2013

SAID J. CHITEMBWE
J U D G E