



REPUBLIC OF KENYA

High Court at Embu

Criminal Appeal 130 of 2009

PATRICK MUIGAI NGANGAAPPELLANT

VERSUS

REPUBLIC.....RESPONDENT

From original conviction and sentence in Cr. Case No. 33 of 2009 at the Resident Magistrate’s Court at Karaba by HON. E.K. NYUTU – RM on 8/6/2009

J U D G M E N T

PATRICK MUIGAI NGANGA the Appellant herein was charged with the offence of Grievous Harm contrary to section 234 of the Penal Code. The particulars as stated in the charge sheet were as follows;

PATRICK MUIGAI NGANGA: On the 28th day of January 2008 at Ciagini village Wamumu sub-location, Thiba location in Kirinyaga District within Central Province unlawfully did grievous harm to ELIKANA CHEGE MWANGI.

The Appellant denied the charge and the matter proceeded to full hearing. The Appellant was convicted and sentenced to seven years imprisonment. He was dissatisfied and filed this appeal challenging the conviction and sentence raising a main ground that the sentence was too harsh. When the appeal came for hearing he abandoned his appeal on the conviction and asked the Court to reduce the sentence as he was now reformed.

The learned State Counsel did not oppose his appeal on sentence.

As a 1st appeal Court I am enjoined to re-evaluate and reconsider the evidence on record and come to its own conclusion. I am also alive to the fact that I did not see nor hear the witnesses. In this re-evaluation I am guided by the cases of;

1. NGUI -V- REPUBLIC [1984] KLR 729

2 SIMIYU & ANOTHER -V- REPUBLIC [2005] KLR 192

The Prosecution case is that on 28th January 2008 at 7.30 pm P.W.1 left his shop and went to relieve himself. He smelt some cigarette smoke. On his way back he had some noise on the the fence and flashed his 2 battery torch in the direction of the noise. He identified the Appellant whom he knew well. He also

identified his voice when he said he had finally caught him. The Appellant hit him on the head and he fell down. The Appellant took off. P.W.1 went to his house and on seeing him his nine year old daughter went out screaming and neighbours came. She also went to call her mother (P.W.3) who had visited her parents. Those who responded to the screams were P.W.3 – P.W.5. They all stated that when they asked P.W.1 who had assaulted him he told them it was **MUIGAI** the Appellant. The Appellant was arrested by youths on the same day. P.W.2 confirmed that P.W.1 suffered a cut on his head measuring 15cm long. He was treated at Mwea Mission Hospital and at Kenyatta National Hospital. A scan revealed a fracture of the parietal bone which had gone to the brain. The injury was assessed as Grievous Harm (EXB 1 & 2). The Appellant gave an unsworn statement of defence and denied the charges. He explained how he was arrested from his house on 28/1/2008 at 9pm. He said he was not properly identified. The offence took place at night but P.W.1 explained clearly how he was able to identify the Appellant. He also told everyone available the person who had assaulted him. And this led to his arrest the same night. The Appellant was well known to P.W.1. The learned trial Magistrate considered all the evidence including the defence well and came to the right decision. The Appellant was satisfied with the conviction and hence abandoned it. I am satisfied that the conviction is safe.

Coming to the sentence which the Appellant claims is harsh, I wish to state that the injuries suffered by the complainant were very serious. He had a fracture of the parietal bone.

The Appellant was sentenced to seven years imprisonment. The maximum sentence for this offence is life imprisonment. What the Appellant did was wicked but I hope his stay in prison right from the date of his arrest on 28/1/2008 has taught him a lesson. He was never released on bond. The State is not opposed to his release. I will therefore reduce the sentence to the period already served.

He will be released forthwith unless otherwise lawfully held.

Orders accordingly.

DATED AND DELIVERED AT EMBU THIS 15TH DAY OF MARCH 2013.

H.I. ONG'UDI
J U D G E

In the presence of;

M/s Ingaidzu for State

Appellant

Njue – C/c