



REPUBLIC OF KENYA

High Court at Embu

Criminal Appeal 117 of 2010

PETER NTHIGA MBOGOAPPELLANT

VERSUS

REPUBLIC.....RESPONDENT

From original conviction and sentence in Cr. Case No. 1145 of 2009 at the Principal Magistrate's Court at Siakago by HON. S.K. MOKUA – RM on 11/8/2010

J U D G M E N T

PETER NTHIGA MBOGO 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;

ALEX MUGENDI NDWIGA: On the 28th day of September 2009 at Mbondoni sub-location in Mbeere District of the Eastern Province, unlawfully did grievous harm to PHINEAS NGARI KASUBAH.

The matter proceeded to full hearing and the Appellant was convicted and sentenced to five years imprisonment on 11/8/2010. He was dissatisfied with the Judgment and appealed against both the conviction and sentence raising the following grounds;

- 1. THAT the learned trial Magistrate erred in both law and fact by failing to solve the vivid contradiction present in prosecution case in favour of accused and yet they touched the core of the case.**
- 2. THAT the learned trial Magistrate erred in both law and fact by failing to consider the Appellant's defence.**
- 3. That the trial Court findings in the Judgment was not supported by evidence adduced thereof.**
- 4. That the sentence imposed was manifestly harsh and excessive considering all circumstances of the case.**

When the appeal came for hearing the Appellant abandoned his appeal on conviction. He only pursued his appeal on sentence praying the same to be reduced as he had served a large portion of it.

The State through Ms Ing'ahizu opposed it on the ground that the evidence was overwhelming and the Appellant should complete his sentence.

This being a 1st appeal its the duty of this Court to re-evaluate and reconsider all the evidence on record and arrive at its own conclusion. Ref:

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

2. SIMIYU & ANOTHER -V- REPUBLIC [2005] 1 KLR 192

An evaluation of the evidence reveals that PW2 was attacked while at his homestead by the Appellant. The time was 5pm. The Appellant came armed with an axe, hit the roof before landing on him. He cut him on the shoulder as he tried to shield himself. He screamed and his wife rushed out of the house and found him already cut. She rushed to the police patrol base and reported. PW4 an AP confirmed receiving the report and rushing to the scene with a colleague. They confirmed the report and arranged to have PW2 taken to Embu Provincial General Hospital. PW1 confirmed the injuries suffered. PW2's right hand had been weakened as a result of the assault.

In his defence the Appellant had raised an *alibi* which was displaced by the evidence of the Prosecution witnesses. The appellant is a neighbour to PW2 and PW3. The attack took place at their home. It occurred in broad daylight. There is no reason why PW2 and PW3 would lie against the Appellant.

I am satisfied that the learned trial Magistrate analysed the evidence well and arrived at the correct decision. This was a well planned crime. The Appellant even came to the victim's home to execute it. PW2 can no longer effectively use his right hand. The Appellant was given a sentence of five years. The said sentence is within the law.

I do not see any reason to make me interfere with it. The Appellant will serve the whole sentence. Appeal is dismissed. Right of Appeal explained.

DATED AND DELIVERED AND SIGNED AT EMBU THIS 26TH DAY OF APRIL 2013.

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

In the presence of;

M/s Ing'ahizu for State

**Appellant
Njue**