



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CRIMINAL DIVISION**  
**CRIMINAL APPLICATION NO. 218 OF 2012**

**TEDDY INGOSI MUDEKU ..... APPELLANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

*(From original conviction and sentence in criminal case Number 4732 of 2010 in the Chief Magistrate's Court at Makadara – D. Kinaro (SRM) on 23/07/2012)*

**JUDGMENT**

1. The appeal arises out of the conviction of the appellant in **Cr. Case No. 4732 of 2012** in which he was convicted for the offence of grievous harm contrary to **Section 234** of the **Penal Code**. He was sentenced to serve 14 years imprisonment. The brief particulars of the case were that on the 4<sup>th</sup> day of December of 2010 at Motherland slums within the Nairobi area province he unlawfully did grievous harm to **Samuel Okutoi**.
2. He has now come on appeal citing grounds in which he states that the charge sheet was defective, and that the prosecution's case was not proved beyond reasonable doubt.
3. In response, Miss Ndombi the learned state counsel submitted that **PW1** the complainant testified that it was upon being informed by **PW2** that the appellant was looking for him that he proceeded to see him. She further averred that the appellant stabbed him four times in the ribs. **PW2** corroborated the evidence, and both **PW1** and **PW2** identified the appellant since it was during the day. **PW4** the Dr. produced the P3 form which was prepared in reliance of treatment notes from Kenyatta National Hospital. He confirmed that **PW1** sustained injuries amounting to grievous harm, and that the lower court considered the evidence and rightfully convicted the appellant.
4. This court as the first appellate court is required to reconsider and re-evaluate the evidence, and make its own findings and draw its own conclusions, and in doing so it should make allowance for the fact that the trial court had the advantage of hearing and seeing the witnesses. (**see Ngunu v Republic [1984]KLR 729**).

5. Upon re-evaluation of the evidence I find that this is a straight forward case. **PW2** Josphat Ongaki met the appellant on the morning of 4<sup>th</sup> December 2010 looking very angry in his observation. The appellant sought to know from him where Samuel Okutoi was and swore to dispatch the said Samuel to his creator whenever he came upon him. He showed **PW2** the knife hidden in his trousers, with which he intended to carry out his ignoble mission.
6. **PW2** continued on his way but presently, he heard screams from outside and when he rushed to the scene, he found the complainant lying on the ground with four stab wounds from which he was bleeding profusely. He helped to take him to Kenyatta National Hospital.
7. The complainant told the court that on that morning of 4<sup>th</sup> December 2010 he received information that the appellant was looking for him. He set off to go to the appellant's house but came upon him on the road. The appellant swore on his mother's name to kill the complainant and when the complainant turned to leave, the appellant set upon him with a knife and stabbed him four times in the abdomen, chest, left ear and back.
8. The complainant was rushed to Kenyatta National Hospital where he was admitted for three weeks under treatment. The assault was reported to the police who subsequently arrested and charged the appellant. **PW3**, P.C. Magembe the Investigating Officer, visited the complainant in hospital and observed that indeed he had four stab wounds.
9. **PW4**, Dr. Kamau, examined the complainant on 10<sup>th</sup> January 2011 for purposes of filling the P3 form. The P3 form indicates that he found suture marks on the left lower part of the thorax, and a lateral chest wall scar. The X ray revealed "**Haemopneumo**" thorax which the Dr. stated meant the presence of blood and air in the chest cavity. At the time of examination the injuries were one month and six days old. In his opinion the injuries had been caused by a sharp object and he classified them as grievous harm.
10. The appellant in his brief sworn testimony stated that he was arrested on his way to work. He denied the charges which he termed as false.
11. The circumstances of this offence are that it occurred in broad day light and the complainant and the appellant were known to each other prior to the attack. **PW2** also knew both the appellant and the complainant before the date of the offence and his evidence corroborated that of the complainant in material part even though he did not witness the actual stabbing. In my humble view the actions exhibited by the appellant as described by **PW2** and which I have set out in paragraph 5 and 6 of this judgment formed part of the "res Gestae". **Black's Law Dictionary, Ninth Edition pg 1423** defined "res gestae" as:

**"The events at issue, or other events contemporaneous with them."**

**"The res gestae embraces not only the actual facts of the transaction and the circumstances surrounding it, but the matters immediately antecedent to and having a direct causal connection with it, as well as acts immediately following it and so closely connected with it as to form in reality a part of the occurrence. *State v. Fouquette, 221 p. 2d 404, 416-17 (Nev.1950).*"**

12. I must therefore respectively agree with the learned trial magistrate that the prosecution testimony, looked at in totality, was consistent watertight and overwhelming against the appellant.
13. For the foregoing reasons I find no merit in the appeal before me and I dismiss it in its entirety.

**SIGNED DATED and DELIVERED in open court this 18<sup>th</sup> day of September 2013.**

**L. A. ACHODE**

**JUDGE**