



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

CRIMINAL APPEAL NO. 148 OF 2012

BETWEEN

JOHN KINYUA KARIMI APPELLANT

AND

REPUBLIC RESPONDENT

***(BEING AN APPEAL FROM THE ORIGINAL CONVICTION AND SENTENCE IN KARABA
CRIMINAL CASE 312 OF 2009 BY E.K. NYUTU R.M ON 19TH JULY, 2010)***

JUDGMENT

1. The appellant John Kinyua Karimi, appeals against conviction and sentence in a case where he was charged with the offence of causing grievous harm contrary to **section 234** of the **Penal Code (Chapter 63 of the Laws of Kenya)**. He was imprisoned for a term of seven years. The particulars of the offence were that on 5th April 2009 in Kwivota Village, Wamumu Sub-location, Thiba Location, Kirinyaga District did grievous harm to Harun Ngige Nyambura.
2. The prosecution evidence is that on 5th April 2009, the appellant met Harun Ngige Nyambura, the complainant, PW 1 at about 8.00p.m when he was returning home from Ciagini pushing his bicycle. He grabbed PW 1, stabbed him twice on the left thigh, left side of the abdomen and left side of the chest to the extent that his intestines were protruding from the abdomen. PW1 testified that he struggled with the appellant to disarm him while screaming. The screams attracted one Geoffrey Muchiri who separated the appellant and PW 1. PW 1 ran to a nearby shop belonging to Jane Kimani, PW 2, where he collapsed. PW 2 heard PW 1 screaming that he had been stabbed. On seeing PW 1, PW 2 screamed thereby attracting members of the public who came and took PW 1 to a nearby clinic. PW 1 was later taken to Kerugoya Hospital by his brother, Simon Fundi Nyambura, PW 3.
3. PW 4, PC Sammy Mwangi, the investigating officer, confirmed that he received a report of the incident from George Muchiri, who had tried to intervene when PW 1 was stabbed. He booked the report on 5th April 2009. He testified that PW 1 stayed in hospital for two weeks. After discharge, he was issued with a P3 form and recorded a statement. He arrested the appellant after being identified by PW 1.
4. PW 5, Naomi Ngugi, the Clinical Officer working at Gategi Dispensary produced the P3 form which confirmed the injuries sustained by PW 1. She testified that on the material day when PW 1 came into the clinic, his clothes were blood stained. PW 1 reported to her that he had lost consciousness after the assault. She noted that he had a penetrating stab wound on the left side of

- the abdomen and on the left chest between the 7th and 8th ribs and two stab wounds stitches on the left thigh. She noted that the probable weapon was a sharp object and concluded that the degree of the injury was grievous harm.
5. The appellant gave unsworn testimony during the trial where he confirmed that on the material day, he went to a club at Gateri where he found PW 1 drunk. PW 1 was chased away by the club owner and he went off. The appellant stated that he stayed in the club until 9.00 pm then went home. It is on the next day that he learnt that PW 1 had been stabbed. The appellant also testified that he had a dispute with PW 1 over access to water. PW 1 accused him of interfering with the flow of water hence he was framed.
 6. The learned magistrate analysed the evidence and concluded that the prosecution had established the case beyond reasonable doubt. The first appellate court is called upon to re-examine and re-evaluate the evidence but without the privilege of hearing or seeing the witnesses (*Okeno v Republic [1972] EA 32*). The appellant's complaint is that he was charged and convicted on the basis of mistaken identity. He submits that the identification and recognition was not free from error and mistake. That no one none of the witnesses saw the complainant being stabbed by him. The State supports the conviction and sentence.
 7. It is not in doubt that PW 1 was stabbed with a sharp object. His injuries are confirmed by evidence of PW 2 who found him lying at his shop, PW 3 who took him to hospital and PW 5, who produced the P3 form and who confirmed that the injuries were consistent with stabbing by a sharp object.
 8. The evidence clearly shows that the identity of the appellant was established beyond reasonable doubt. The appellant and PW 1 had an altercation which led to the stabbing. PW 1 knew the appellant before the incident and the altercation before the stabbing was sufficient time for PW 1 to identify the appellant. The evidence of identity is corroborated by the police report made by one Geoffrey Muchiri immediately after the incident. He clearly identified the appellant. PW 2 also confirmed that PW 1 told her that the appellant had stabbed him immediately he collapsed at her shop. Although George Muchiri was not called as a witness, evidence and particularly the chain of events from the stabbing to the time the PW 1 was taken to hospital and the appellants arrest clearly show that the appellant was the perpetrator of the felony.
 9. The appellant's unsworn testimony also confirms that PW 1 and the appellant knew each other and that on the material day, the two were together at the club earlier but that the appellant remained there till 9.00 p.m. The appellant's testimony regarding the existent dispute with PW 1 over access to water further goes to solidify the prosecution's case on possible motive.
 10. Taking the evidence as a whole, the prosecution established that the appellant committed the offence for which he was charged and the alibi could not stand. He was properly convicted.
 11. As regards the sentence, the appellate court will only interfere with the sentence if the learned magistrate acted on some wrong principle, overlooked material factors or the sentence is manifestly excessive in the circumstances of the case. The sentence of seven years imprisonment for a deliberate act was warranted and I do not find any error on the part of the magistrate.
 12. The appeal lacks merit and is dismissed.

DATED and DELIVERED at EMBU this 30th October 2013.

D.S. MAJANJA

JUDGE