



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT BUSIA**

**HCRA NO. 18 OF 2013**

**VINCENT MAKOKHA .....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**(An Appeal arising out of the conviction and sentence of I.T Maisiba P.M delivered on 4<sup>th</sup> April 2013 in Busia cr. Case no.2125 of 2 012)**

**J U D G E M E N T**

1. Vincent Makokha (The Appellant) says that his conviction and sentence are not deserved and should be upset by this court.
2. It was alleged that the Appellant unlawfully did grievous harm to D B (D) on 23<sup>rd</sup> November 2012. The Trial Court found him guilty of a charge of Grievous Harm contrary to section 234 of the Penal Code and sentenced him to a prison term of 7 years.
3. D is aged 7 years and was at the material time a pupil at [particulars withheld]. That is a nursery school. Children want to play and so D sought one of his friends on 23<sup>rd</sup> November 2012 to play the popular game 'Fantas or Bano'. He met the Appellant who had the responsibility of herding some animals belonging to their neighbour. D thought it unusual that the animals were eating maize belonging to his parents. He in fact thought it wrong. So he alerted the Appellant.
4. That enraged the Appellant who threw a 'rungu'(club) at D. That rungu hit D on his right rib and caused him severe injuries. D's father L A B (PW2) was informed and he went to the scene. He found his son injured and he confronted the Appellant. The Appellant ran away.
5. S S (PW3) who hails from the same locality saw the injured D. As a neighbour he was told about the incident. The Appellant came to PW3's home on the same day at about 7.30 p.m. but when asked about the incident, he got annoyed and went away.
6. D got medical attention at Sio Port District Hospital where Nathan Bwabi (PW4) a Clinical Officer saw him. PW4 also completed a P3 form in respect to his injuries.
7. When invited to make his Defence, the Appellant chose to remain silent. That short evidence requires my reassessment and evaluation.
8. D is a child. At the time of the incident he was 7 years. The story about his woes was simple and straightforward. He knows the Appellant. He is a neighbour. It was clear to him that the Appellant

threw a 'rungu' at him. This simple story was coherent and unshaken in Cross Examination. Let me reproduce all the answers he gave in Cross Examination;

**“The cows were yours. You threw a rungu to(sic) me. You went to pick a rungu and threw it at me. I was with other children of my neighbour who saw you.”**

9. Just like the Trial Court, I will believe this witness. His father (PW2) found him injured. Those injuries were confirmed by PW4. The complainant told the court how he sustained those injuries. They are attributed to the Appellant. That evidence is in my view fool proof and can safely sustain a conviction.

10. The P3 form that was completed by PW4 revealed the following injuries;

- a. Abdomen Disconded/Tense,
- b. Tenderness Associated with Rebound
- c. Tenderness and reduced bowel sound at the left Hypochondrium.

On assessment, the Clinical Officer thought the injuries to be a Maim. The P3 form defines Maim as follows:-

**“ The destruction or permanent disability of any external or internal organ, member or sense”.**

Those are serious injuries and the charge and conviction were fitting. This Court upholds the decision of the Magistrate.

11. The maximum possible sentence for an offender who causes Grievous Harm to another is harsh. That person is liable to a life imprisonment. So the sentence of 7 years imprisonment meted to the Appellant would not manifestly excessive. Although the Appellant was a first offender, he was not remorseful. This Court will not interfere with that sentence. The result; the Appeal is dismissed in its entirety.

**DATED, SIGNED AND DELIVERED AT BUSIA THIS 14<sup>TH</sup> DAY OF NOVEMBER 2013.**

**F. TUIYOTT**

**J U D G E**

**IN THE PRESENCE OF:**

.....**COURT CLERK**

.....**FOR APPLICANT**

.....**FOR RESPONDENT**