



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CRIMINAL APPEAL NO. 146 OF 2011

GABRIEL MBELE 1ST APPELLANT

JAKAN FUBU2ND APPELLANT

JEREMIAH MGANGU.....3RD APPELLANT

VERSUS

REPUBLICRESPONDENT

(From the Original Conviction and Sentence in the Criminal Case No. 252 of 2011 of the Senior Resident Magistrate's Court at Wundanyi – Hon. Chesang – DM II)

JUDGMENT

The appellants were Convicted and Sentenced to one year imprisonment as regards the first appellant and in respect to 2nd and 3rd appellant a fine of Ksh. 20,000/= in default nine (9) months imprisonment. This appeal is in respect to the first appellant only as the 2nd and 3rd appellants have already served their Sentences and their appeal is marked abandoned.

The three appellants had been Convicted of the offence of grievous harm contrary to section 234 of the penal code.

The particulars being that on the 11th day of March, 2011 at about 6:00 pm at Josa Village Kishamba Location within Taita Taveta County jointly with another not before the court unlawfully did grievous harm to Boniface Mwaengo Mwawughanga.

It is common ground that at the time the trial magistrate was dealing with this case she was of the rank of District Magistrate II (Professional).

The charge before her was that of grievous harm contrary to section 234 of the Penal Code.

The first schedule to the Criminal Procedure Code gives a break down of offences and the jurisdiction of various Courts in regard to these offences.

The offence of causing grievous harm is triable by a subordinate court of first class. A DM II Court is clearly not a subordinate court of first class.

Jurisdiction is everything. The trial magistrate did not have jurisdiction and the entire trial was a

nullity. The Conviction and Sentence was without any basis. The Conviction is quashed and Sentence set aside.

The appellant is set at liberty unless otherwise lawfully held.

Judgment delivered dated signed this **11th** day of **November, 2013**.

.....

M. MUYA

JUDGE

11TH NOVEMBER, 2013

In the presence of:-

Learned Counsel for the Defence Mr. Ajibo holding brief Obara

Learned State Counsel absent

Court clerk Musundi