

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

HIGH COURT CRIMINAL CASE APPEAL NO. 312 OF 2011

(From the original conviction and sentence of E. S. Olwande, PM at Butere SPM'S, criminal case no 301 of 2011)

PATRICK MASENGO LUKOKO.....APPELLANT

VERSUS

REPUBLICRESPONDENT

JUDGEMENT

The appellant was charged before the PMs court Butere with the offence of grievous harm contrary to Section 234 of the Penal Code. Particulars of the offence were that on the 9.8.2011 at Indangalasia village, Shiatsala Sub-Location, South Marama Location in Butere District within Kakamega County, unlawfully did grievous harm to Doris Aoko Mukaba.

The prosecution's case is that the appellant who is a brother in-law to complainant attacked her on 9.8.2011 at 3 pm and injured her with a panga. The appellant apparently entered the complainant's house and took her maize and when complainant asked why the appellant pounced on her cutting her on the head, back and arm. She fell down screaming and her mother in-law Sarah PW2 came to her rescue then she lost consciousness. She came to her while in hospital where she was admitted for over 1 month. She later learnt that the matter had been reported to police and appellant arrested. PW3 the clinical officer who treated the complainant established that she suffered shock due to bleeding and had a broken left upper limb and cuts on head and back. The degree of injury was grievous harm. The appellant was arrested late the same day by PW4 after he received a report from the Assistant Chief. He was then charged with this offence.

Put on his defence, the appellant denied this charge. He said he was arrested by 3 people for no reason.

The trial magistrate heard the evidence adduced in court and found the appellant guilty of the charge and sentenced him to 6 years imprisonment.

He has now appealed before this court on the ground that the evidence was contradictory and that the sentence was harsh.

I have considered the issue in court. On evidence adduced in court, I do not find any contradictions at all. PW1 stated how she was cut by the appellant and PW2 witnessed this. The doctor who examined her also confirmed she was injured and areas where she was found to have been injured are the areas she has stated she was cut. I find the evidence watertight and corroborated. I find the trial court directed itself properly and reached a proper finding. I therefore confirm this conviction.

The appellant has argued that the sentence meted on him was harsh and asked court to reduce it. I note that the offence in question carries as maximum sentence of life. The trial court exercised its discretion and gave 6 years sentence which is within the sentence required. I decline to interfere with the discretion exercised by the trial court and I dismiss this appeal accordingly. I confirm the conviction and sentence accordingly.

DATED, DELIVERED THIS 11th DAY OF December 2013

HELLEN WASILWA

JUDGE

DELIVERED THIS 11th DAY OF December 2013.

S. J. CHITEMBWE

JUDGE