



REPUBLIC OF KENYA

IN THE HIGH COURT

AT BUNGOMA

CRA NO.137 OF 2009

(From the judgment of the Resident Magistrate at Bungoma in Cr. Case no.2413 of 2006)

REPUBLIC

.....

APPELLANT

~VRS~

LEONARD WOKUTI WEPUKHULU

.....

RESPONDENT

JUDGMENT

The Respondent was acquitted by the Resident Magistrate at Bungoma of assault causing actual bodily harm contrary to section 251 of the Penal Code whose particulars were that on 19/9/2006 at about 3.30 p.m at Napukwe area in Bungoma District in Western Province, he unlawfully assaulted Augustine Wasike Wekesa (PW1) thereby occasioning him actual bodily harm. The State was aggrieved by the acquittal and filed this appeal. The appeal was prosecuted by Mrs. Leting and the same was opposed by the Respondent through his advocate Mr. Makali.

The prosecution case was that PW1 found the Respondent’s son grazing cattle in his land. He detained the cattle and asked the Respondent’s son to go and call his father. The Respondent came while angry and armed with a stick (Exhibit 1). He demanded the release of the cattle. When this was not done, he struck PW1 with the stick on the hand. PW2 (Benard Khala Wasike) is son of PW1. He testified that PW1 instructed him to go and call the village elder PW3 (Sharriff Kundu Wanyama). When he was going, he saw the Respondent approach PW1. The Appellant exchanged words following which the Respondent struck PW1 with a cane. He rushed back but the Respondent fled, leaving the cane. PW2 took PW1 to hospital and to police to report. The prosecution also produced a P3 (exhibit 2) to show PW’s left elbow was swollen and cut.

The Respondent testified on oath in defence to deny the charge. He told the court that he was driving his cattle to the river when he met PW1 who called his son (PW2) for a stick. He was saying he wanted to use it to kill a snake, in reference to the Respondent. He blocked the cattle before he removed his coat. He now had the cane brought by PW2. They came for the Respondent who begun to run away. He was chased up to his shamba. This attracted people who came to the scene. PW1 detained the cattle which were released on the intervention of the village elder. The Respondent was injured on the fingers in the commotion. He called one witness Violet Nekesa Silikanyi (DW2) who said she witnessed the incident,

but did not see the Respondent assault PW1. She stated that PW1 was the aggressor who had the cane.

It was conceded by PW1 during cross-examination that there was a pending civil suit in which he had sued the Respondent for having enticed away his daughter with whom he (the Respondent) had cohabited with for sometime before separation. PW1 had not volunteered that evidence during examination-in-chief. He testified that:

“The accused cheated my daughter because he has a lot of money.”

It was the defence case that the Respondent had been framed because of this outstanding dispute.

The trial court considered the prosecution and the defence evidence with the dispute between the parties in mind, and came to the conclusion it could not believe the prosecution evidence that PW1 had struck the Respondent. The trial court had the advantage of seeing and hearing the witnesses and to gauge their demeanor. The fact that there was bad blood between PW1 and the Respondent raised the possibility that the complainant was a furtherance of the grudge. The other possibility was that the Respondent had been moved by the grudge to attack PW1. This is the scenario that the prosecution found itself in when it set out to discharge its burden to establish the guilt of the Respondent beyond all reasonable doubt. I have on my own reviewed and considered all the evidence and do not find that in reaching the decision that the burden had not been discharged the court fell into error.

The result is that the appeal has no merit and is dismissed.

Dated, signed and Delivered at Bungoma this 21st day of March, 2012.

A. O. MUCHELULE

JUDGE