REPUBLIC OF KENYA

High Court at Malindi

Criminal Appeal 69 of 2011

HAMISI JUMA MUASHE BARAKA ….....APPELLANT

VERSUS

REPUBLIC ….....RESPONDENT

(From original conviction and sentence in Criminal Case No. 420 of 2011 of the Senior Resident Magistrate's Court at Kilifi before R. K. Ondieki – SRM)

JUDGMENT

1. The appellant herein was charged before the Senior Resident Magistrate's Court in Kilifi with Grievous Harm contrary to Section 234 of the Penal Code.

Particulars of the charge are that on the 22nd day of April, 2011 at around 10.00am at Kakanjuni area in Kilifi county of the Coast Province, jointly and unlawfully did grievous harm to SAID MASUDI BAKARI. When the charge was read out to him, he pleaded guilty, was convicted and eventually sentenced to 10 years imprisonment.

2. He has appealed to this court against conviction and sentence. In his memorandum of appeal, he has raised four grounds namely:

1. "That the learned trial magistrate erred in law and fact by convicting me on my plea of guilty without seeing my fundamental rights were violated by not informing me my rights which was constitution of Kenya

2. That the learned trial magistrate erred in law and fact by upholding my conviction and sentence with court considering that I never understood the language used in court as required under section 198(1) of the Criminal Procedure code.

3. That the life sentence imposed on me was unlawfully harsh and excessive.

4. That the learned trial magistrate erred in law and fact by convicting me to life sentence without considering that I was misadvised by my arrestors to plead guilty to the charge sin a promise I will be acquitted.

5. That the plea was equivocal and unconditional."

3. The appellant canvassed his appeal by way of written submission. Through Mr. Kemo, the State opposed the appeal stating that the appellant pleaded guilty to the charges.

4. Under section 348 of the Criminal Procedure Code no appeal is allowed in respect of an an accused person who has pleaded guilty to a charge in the subordinate court, except with respect to legality of or extent of sentence. However, this court is obligated to satisfy itself that the plea of guilty in the Lower Court was unequivocal. The correct procedure for taking pleas was outlined in the celebrated case of **Adan v R [1973]EA 445** as follows:

(i) The charge and all the essential ingredients of the offence should be explained to the accused in his language or in a language he understands.

(ii) The accused's own words should be recorded and if they are an admission and plea of guilty should be recorded.

(iii) the prosecution should then immediately state the facts and the accused should be given an opportunity to dispute or explain the facts or to add any relevant facts.

(iv) If the accused does not agree with the facts or raises any questions of his guilt his reply must be recorded and change of plea entered.

(v) If there is no change of plea, a convictions should be recorded and a statement of facts relevant to sentence together with the accused's reply should be recorded.

3. The record of the Lower Court shows compliance with the above procedure. The charges were read out in Kiswahili language which the appellant understood. He admitted to the charge and the facts as read out. He also gave a mitigation address. The allegation that he did not understand the language used (swahili) are not supported by the record of the Lower Court and even in this appeal. The suggestion that his "arrestors" misled him to plead guilty so that he could be "acquitted" are both vague and unbelievable. His guilty plea in the Lower Court was clearly unequivocal. His appeal on conviction cannot be sustained.

4. Be that as it may I am of the view that despite the cruelty displayed in the commission of the offence the life sentence imposed, being the maximum provided for the offence, was rather excessive. The appellant was treated as a first offender. In as much as his conduct is repulsive, I think a sentence of 10 years imprisonment from the date of sentencing is adequate. I therefore set aside the life sentence imposed and substitute it therefor with a sentence of ten (10) years' imprisonment.

Delivered and signed this 19th day of September, 2012 in the presence of the appellant, Miss Mathangani for the State. Court clerk – Leah/Evans.

C. W. Meoli
MEOLI