

REPUBLIC OF KENYA

High Court at Bungoma

Criminal Appeal 29 of 2009

DENNIS MASESE.....APPELLANT

~VERSUS~

REPUBLIC.....RESPONDENT

(Appeal from the judgment of the conviction and sentence by the Resident Magistrate Hon. P. Achieng in Bungoma court in cr. case no.1980 of 2007)

JUDGMENT

The Appellant was convicted of assault causing actual bodily harm contrary to section 251 of the Penal Code whose particulars were that on 12/4/2007 at Wamono Village in Wamono Sub-location of Namubila Location in Bungoma West District of the Western Province he jointly with another not before court unlawfully assaulted Patrick Sitati Walukuchi (PW1) thereby occasioning him actual bodily harm. He was fined Ksh.10,000/= in default to serve 4 months in jail. The Appellant was aggrieved by the conviction and sentence and preferred this appeal which Mrs Leting for the State opposed.

The prosecution evidence was that on 12/4/2007 at about 5.00 p.m PW1 was in his house with his wife Mary Nanjala (PW3) and two other women, Janet Makokha (PW6) and Norah Musiolo (PW7). Four young men came in armed. They included the Appellant who had a panga. The others had a rungu each. They attacked PW1. The others used rungu while the Appellant cut PW1 on the face, head and left hand. Osman Wamukota (PW2) is PW1's neighbor. He heard screams and when he came he found the Appellant and the other attackers leaving the house. He entered the house and found PW1 bleeding from the head and hands and was unconscious. He was helped to Hospital. The witnesses identified the other attackers as Ochola, Gerald and Ijakait. Medical evidence produced by clinical officer Elias Adoka (PW4) of Bungoma District Hospital showed that PW1 suffered cut wounds on the right side of the forehead, right parietal area and right cheek. He also had a cut wound on the left back part of the forearm. He had suffered harm.

The Appellant opted to keep quiet in defence and did not call witnesses. He was represented by Mr. Kraido who also prosecuted the appeal for him.

The trial court considered the prosecution evidence and found it established beyond reasonable doubt that the guilt of the Appellant had been proved. I have re-evaluated and re-considered the evidence and my independent conclusion is that the conviction was based on sound evidence. PW1's testimony that he was assaulted was confirmed by the medical evidence. His evidence was that the Appellant was one of his assailants and had a panga. He was in the house with PW3, PW6 and PW7. PW3 and PW6 supported that evidence. PW7 was declared hostile when she sought to resile from the statement she had recorded with the police which implicated the Appellant. In court she was saying that she did not see the Appellant in the attack. The trial court correctly found that she was not being truthful. PW2 was attracted by noise and came to find the Appellant and the other attackers running away and in the house PW1 lay injured and unconscious. His evidence further supported PW1's testimony. I find there was overwhelming evidence against the Appellant.

In the result, I find the appeal against conviction not merited and dismiss it. Regarding the sentence, I find that given that the Appellant was in a group of four people all of whom were armed and the fact

that he had a panga which he used to cut and injure PW1, he got off lightly with a fine. I will not interfere with the sentence.

Dated, signed and delivered at Bungoma this 17th day of October, 2012.

A. O. MUCHELULE
JUDGE