



IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL APPEAL NO. 154 OF 2010

(From original conviction and sentence in Criminal Case No. 140 of 2010 of the Senior Resident Magistrate' court

at Maralal – A. KITHUKU, SRM)

JAMES

LOBOITONG.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

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JUDGMENT

The appellant herein is James Loboitong. He was convicted of the offence of grievous harm contrary to Section 234 of the Penal code and was sentenced to serve 8 years imprisonment. He was dissatisfied with both the conviction and sentence. At the hearing of the appeal, he abandoned the appeal against conviction and asked the court to consider reducing his sentence which he contends is harsh and excessive. The State Counsel, Mr. Omwenga opposed the appeal contending that the offence carries a life sentence. He urged that the injuries that were inflicted on the complainant were severe and 8 years is not excessive.

The complainant was PW2, Mailon Lenangarima, who testified that on 3/7/08, he was at his brother's house when the appellant went to the complainant's brother's house and called him by name but PW2 told the appellant to go away. PW2 said the appellant was drunk. PW2 later came out to find out why the appellant was calling him. The appellant told him that he had differed with PW2's wife and wanted PW2 to help them reconcile. PW2 agreed and went home with the appellant. They talked and reconciled and the appellant took a cup of changaa and gave it to PW2. PW2 declined to take it and the appellant gave it to his wife who also refused to take. The appellant got annoyed, slapped the wife and told PW2 to get out. As PW2 got out, he followed him and stabbed him on the back with a knife which penetrated through his stomach. PW2 shouted for help and he lost consciousness. He came to while at Wambaa Catholic Mission Hospital. He identified the knife used to stab him as MFI 3. PW2 knew the appellant as a neighbour.

PW3, Joshua China Lenagwima, PW2's brother, recalled that on 3/7/08 he was with PW2 when the appellant called PW2 and after two requests PW2 followed the appellant. After a while, he followed them and found a tin lamp in the house in which they were and the appellant held a cup of changaa. He left them but after about 20 minutes, he heard screams, ran there and found the appellant pulling the PW2 who had a knife inside his stomach. The appellant pulled out the knife and ran away after throwing the knife in his house. PW3 used a wheelbarrow to take PW2 to Wambaa Mission Hospital. They went to report at Wambaa Police Station where they found the appellant had already arrived and surrendered to the police as he believed he had killed PW2.

PW4 corroborated PW3's evidence that it is the appellant who surrendered himself to the police alleging he had killed somebody. Pw4 visited the scene and found a pool of blood at the door of the appellant's house. He recovered the knife and rungu (club) from the appellant's house.

PW1, Fred Lesulal is the Clinical Officer who produced the P3 which had been filled by Peter Ndakaiti with whom he had worked for 4 years and knew his handwriting and who had examined PW2. The findings were that the knife had penetrated through the chest and punctured the lungs. The ongoing was classified as grievous harm.

In his defence, the appellant said in his unsworn defence that on the said date, he went home, ate super at 8.30 p.m., slept till 10.00 p.m. when his wife woke him up. He went and found two people with a torch. One was lying down drunk and he was injured and was vomiting. He went to report at Wambaa Police Station.

Having evaluated the evidence adduced before the lower court, the appellant did not bother to explain what instigated his sudden, unprovoked, and violent attack on PW2. The stab wound was one, but the fact that he drove a knife into PW2, an act that could have ended the life of PW2 makes it a very serious offence.

An offence of grievous harm carries a maximum sentence of life imprisonment. In my view, 8 years imprisonment for the injuries inflicted on the complainant taking into account that the same was totally uncalled for, is not harsh. There is totally no good reason for this court to disturb the trial court's decision on the sentence. I however, note that the appellant was in remand from the time of arrest on 3/7/2008 upto the time he was convicted, about 1½ years which I will take into account and reduce the sentence by the period spent in remand and I hereby allow the appeal to that extent and sentence the appellant to 6 years imprisonment.

DATED and DELIVERED this 25th day of January, 2011.

R.P.V. WENDOH

JUDGE

PRESENT:

Appellant present – in person.
Mr. Nyakundi for the State.
Kennedy – Court Clerk.