



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
CRIMINAL APPEAL NO.361 OF 2010

JOHN KINYANJUI MWAURA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(An Appeal from original conviction and sentence in Molo P.M.CR.C.NO.2371 of 2008 by Hon G. Sagero, Resident Magistrate, dated 10th May, 2011)

JUDGMENT

The appellant was charged with causing grievous harm to Benson Kahehu Gachie (the complainant) on the 26th December, 2008 at Tegea “B” in Molo.

The appellant and the complainant are neighbours. On the day in question, the complainant found the appellant and his wife P.W.3 Monica Wangui in a compromising position with the former touching the latter’s breasts. Upon seeing the complainant, the appellant walked away while Monica retreated to their home. The complainant sought to know from Monica what she was doing with the appellant. She denied having been with the appellant. The complainant was not satisfied with that explanation and set out to find the answer from the appellant himself. He eventually caught up with the appellant who explained to him that he had only wanted to know from Monica whether the complainant was still making posts.

The complainant returned home, confronted Monica and beat her up. The complainant left and went to drink. According to him, he bought two bottles of beer and took one. At 9.30p.m., he returned to the appellant’s home carrying the other bottle of beer. He called out the appellant who came out armed with a panga. On seeing this, the complainant took to his heels screaming. When he got to his home, he noticed the appellant was not following him. He (the complainant) again walked back towards the appellant’s home to inform a neighbour, P.W.2, James Muraya about the earlier incident between appellant and Monica. Muraya advised him to go home and sleep. As he walked home he spotted the appellant with a torch but continued walking until he got to the gate heading to his home. He was suddenly attacked and cut on the right side of the skull and the cheek cutting across deeply involving the teeth. He maintained that he was attacked by the complainant.

P.W. Atanas Momanyi Ondieki, the clinical officer who examined the complainant assessed the injury as grievous harm. The appellant was arrested and charged.

In his defence, the appellant denied assaulting the complainant. He explained that his house had been invaded by people who assaulted him, On the way to the police station to report this, he was instead arrested in connection with the present offence. The learned magistrate was convinced that the appellant committed the offence and upon conviction sentenced him to serve 3 years imprisonment. That aggrieved the appellant who has challenged only the sentence.

There is no doubt that the complainant was viciously attacked on the night in question at about 10.00p.m. Earlier on he had seen the appellant in a compromising position with his wife; he had beaten his wife over this and went to drink, either to drown his frustration or to gather dutch courage. After taking some drink, he confronted the appellant for the second time seeking to know what the latter was doing with his wife. The appellant chased him. Muraya confirmed that when he heard the complainant screaming he came out of his house and met the appellant who confirmed to him that he was chasing the complainant.

Although the incident took place at night, the concatenation of the above events leaves no doubt in my mind that the attack on the complainant was perpetrated by the appellant. Of course, the complainant was the aggressor, having twice confronted the appellant, but the latter's action of cutting the complainant in the manner he did was uncalled for and in excess of the nuisance he set out to repel. The three year sentence imposed instead of a possible life imprisonment, in my view was lenient considering the serious injuries sustained by the complainant.

For these reasons, the appeal fails and is dismissed accordingly.

Dated, Delivered and Signed at Nakuru this 19th day of May. 2011.

W. OUKO

JUDGE