



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI

CRIMINAL APPEAL CASE NO. 109 OF 2010

MARGARET WAIRIMU
RWAMBA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

*(Appeal against the conviction and sentence by B. N. Nzakyo, Resident Magistrate, at Othaya
in Othaya Resident Magistrate's Criminal Case No.385 of 2008 dated 7th August 2010)*

JUDGMENT

Margaret Wairimu Rwamba, the appellant herein, was tried on a charge of assaulting a Police Officer in due execution of his duty contrary to *Section 253 (b)* of the Penal Code. After undergoing a lengthy trial, she was convicted and sentenced to serve one (1) year on probation. The Appellant was dissatisfied with the decision hence this appeal.

On appeal, the Appellant listed the following grounds in her Petition:

- 1. *The trial Magistrate erred in law and fact by convicting the appellant on the basis of inconsistent evidence.***
- 2. *The trial Magistrate erred in law and in fact in coming to the conclusion that the evidence of P.W. 2 was corroborated by that of P.W.1 and P.W.4 when it is clear from the Court record that these witnesses contradicted each other on material facts.***
- 3. *The trial Magistrate erred in law and in fact in coming to the conclusion that the fact the appellant was injured in the fracas was immaterial as she had recourse elsewhere. In doing so, the trial Magistrate ignored the fact that the Complainant in this case could have been injured in the fracas and not by an act of a deliberate assault by the appellant.***
- 4. *The trial Magistrate failed to judicially assess the evidence on record which clearly shows that the complainant's evidence on the injuries received and the cause of the injuries was not supported by***

the evidence of the clinical officer who completed the P3 form (P.W.3).

5. *The trial Magistrate erred in law and in fact by dismissing the defence as being without merit.*

6. *The trial Magistrate erred in law and in fact by making a finding that the prosecution had proved its case beyond any reasonable doubt against the appellant.*

Before considering the merits or otherwise of the appeal, let me set out in brief the case that was before the trial court. **P.C. Ngururi** (P.W.2) while on official duty, visited the home of the appellant on 7th October 2008. It is said that there was a commotion when the Appellant resisted the attachment of her property by auctioneers he had accompanied to provide security. There was evidence of a medical report showing that the Complainant suffered soft tissue injuries on his hands. P.W. 2 alleged that the Appellant threw objects at him thus hitting him. **P.C. Joseph Ndirangu** (P.W.1) and Bernard Gaturukua (P.W.4) claimed they saw the Appellant throwing objects at P.W.2. The Appellant denied committing the offence. She in fact claimed that she was the aggrieved party who got injured in the fracas.

On appeal, **Mr. Etole**, learned advocate for the appellant, urged this Court to allow the appeal because the evidence relied upon were contradictory. Mr. Etole pointed out that the evidence of P.W.1, P.W.2 and P.W.4 contradicted each other. It is said that P.W.1 said that the Appellant threw stones, pieces of wood and gumboots at the Police while P.W.2 said the appellant threw a rungu and a jerrican at him. P.W.4 stated that the Appellant bit the Complainant using her teeth. The **Clinical Officer** (P.W.4) stated that the Complainant suffered bruises on the upper limb and shoulders. I have considered the contradictions pointed out and I am of the humble view that those contradictions are of no material nature as to affect the outcome of the case. The truth of the matter is that there was a commotion hence it is not possible for witnesses to give a consistent story. There is no doubt that the Complainant was injured as a result of a fracas which occurred in the homestead of the Appellant. The appellant admits she pushed the complainant. I see no merit on this ground.

Mr. Etole, further argued that the trial Magistrate erred when she stated that the Complainant was injured yet it is possible that the Complainant could have been injured elsewhere with the participation of the appellant. I have re-evaluated the evidence and it is clear that the Appellant violently resisted the attachment of her goods. The Appellant was seen throwing items at the Complainant by P.W.1 and P.W.4. The clinical officer (P.W.3) confirmed the Complainant was injured.

The Appellant's advocate complained that her defence was not given serious attention. It is said the trial Magistrate did not give reasons why he disbelieved the allegation that the appellant was the assailant who used sticks against her. I have on my part reconsidered the defence case. It is clear from the record that the learned trial Magistrate simply rejected the Appellant's defence on the basis that she did not take any legal recourse against her assailant. I think the trial magistrate gave good reasons why she disbelieved the Appellant's defence. I can infer that the Appellant sustained her injuries when resisting the attachment of her goods. In any case, I have formed the view that the Appellant may have obtained a P3 form for purposes of setting up her defence. She also took time to lodge her complaint.

In the end I see no merit in the appeal. The same is ordered dismissed.

Dated and delivered at Nyeri this 6th day of October 2011.

J. K. SERGON

JUDGE

In open court in the presence of Mr. Wachira holding brief for Mr. Etole for appellant and Miss Maundu for the State.