



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET
Revision Case 2 of 2010

REPUBLIC.....PROSECUTOR
VERSUS
NGUGI MURAYA.....ACCUSED

[A revision from the decision of Senior Resident Magistrate, Hon. G. A. Mmasi,
in the Chief Magistrate's Court at Eldoret - Eldoret CMCR NO. 207 of 2009]

RULING

(REVISION)

I. Background

1. An offence of assault contrary to Section 251 of the penal Code was preferred against one Ngugi Muraya by the Republic.
2. The complainant and victim was Jane Wamboi, a female adult who alleged that she had been assaulted by the said Ngugi Muraya. After hearing the two parties together with their respective witness, the trial magistrate found in her judgment that the offence of assault was not proved but that of affray. She acquitted the original accused in the CMCC Case No. 207/09.
3. The complainant requested the state to appeal against the decision. They declined to do so on ground that no prove point of law was established to appeal against.
4. The complainant wrote to this court on an unknown date but filed on 17th March 2010 claiming justice.

II. Opinion

5. Only the state may move a file on appeal. If they fail to do so, the High Court cannot compel then.
6. Nonetheless, the offence of assault contrary to Section 251 of the Penal Code was brought in the name of the Republic being an offence against the Republic. The victim/ complainants remedy lies in a Civil Law suit. This is for the claim of Battery being a TORT.
7. The victim may accordingly file suit to claim damages for unlawfully Battery against the original accused in a Civil Court.
8. The Revision discloses no irregularities in the case conducted by the Trial Magistrate. It is accordingly declined by this court.

Dated this 28th day of May 2010 at Eldoret.

M.A. ANG'AWA
JUDGE

Advocate

Nil

Complainant in Person

Accused in Person - Absent