



REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT EMBU  
Criminal Appeal 69 of 2006

**SAMUEL MWANGI KINYUA.....APPELLANT**  
**VERSUS**

**REPUBLIC.....RESPONDENT**

**J U D G M E N T**

On 9/5/2005 at about 3.50 p.m, the appellant herein was driving motor vehicle Registration No. KTT 541 a Datsun 1200 pick-up along the Kerugoya –Kutus Road. P.C Grace Wanjiru and other colleagues were on Traffic duties along the said road. They stopped the appellant’s motor vehicle and upon inspecting it, he was found with a few faults for which he was to be escorted to the police station for booking. The complainant boarded the motor vehicle to escort it to the police station. Somewhere in town before they reached the police station, the appellant stopped his motor vehicle and said he would not drive to the police station. The complainant attempted to take the ignition keys but the appellant is said to have kicked her on her chest, shoulder and on her leg before she managed to open the passenger door and alight. The appellant is said to have escaped from the scene.

The complainant went to the police station and reported the matter. She was issued with a P3 form produced as exhibit by PW3. The complainant had suffered soft tissue injuries to her chest, right upper arm and her right knee. The degree of injury was assessed as harm.

The appellant was later arrested and charged with the offence of Assault in resisting Arrest contrary to Section 253 (a) of the penal code.

According to the appellant however, it was the complainant who hit him and so he refused to drive the car to the police station.

The magistrate after hearing this evidence found the appellant guilty of the offence, convicted him and sentenced him to 12 months imprisonment.

Being aggrieved by that conviction and sentence, he filed this appeal. His appeal is against the conviction and sentence. On the sentence he says he ought to have been given the option of a fine. He also contends that section 211 of the Criminal Procedure Code was not complied with but the record clearly shows that the same was complied with. The other grounds were that the charges were fabricated by the police and that the magistrate was biased for having heard the traffic offences emanating from the same incident.

I have re-evaluated the evidence adduced before the trial court along with the said grounds of Appeal. I find like the learned trial magistrate did that indeed the complainant had sustained the injuries as reflected in the P3 form. Although the appellant claimed to have been injured, he never made a formal complaint or sought treatment in hospital. From the record, the complainant even produced her soiled blouse to show that the appellant had stepped on her. The appellant's assertion that it was the complainant who had grabbed his leg cannot be true because she could not have imprinted the appellants foot on her blouse.

I am satisfied that the appellant did indeed assault the police officer while resisting arrest. The magistrate decided the case on the evidence on record and there is nothing to show that he was biased. I have no basis or reason to interfere with the Judgment of the learned trial magistrate. The same was properly arrived at. Accordingly, the appeal on conviction therefore fails. On the sentence, the same was proper and lawful but in my view it will not serve the ends of justice to send the appellant back to prison 4 years down the line for him to serve the few months left. I will therefore interfere with the same and set it aside and substitute thereof a fine of Ksh.3,000 (three thousand) in default to serve 3 months imprisonment.

**W. KARANJA**  
**JUDGE**

Delivered, dated and signed at Embu this 6th day of May 2010

**In presence of:-Appellant, Mr. Ngigi for Mr Gitonga for him and Ms Matiru for the state.**

**W. KARANJA**  
**JUDGE**  
**6/5/2010**