



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA
CRIMINAL APPEAL NO. 126 OF 2008

(Appeal against conviction and sentence from the original Criminal Case No.755 of 2007 in Mumias Senior Resident Magistrate’s Court from the Judgment of (MR. E.K. MAKORI, AG. SRM) dated 18th December, 2008

AMINGA OCHOLA

OOGA

.....: **APPELLANT**

V E R S U S

REPUBLIC

.....: **RESPONDENT**

J U D G M E N T

1. Aminga Ochola Ooga was charged and convicted with the offence of grievous harm contrary to **section 234** of the Penal Code. It was alleged that on 3.11.2005 at Isonge Market, East Wanga Location in Butere/Mumias District within Western Province, he unlawfully and grievously so, harmed Everline Ogalla. He was sentenced to ten (10) years’ imprisonment and although in his Petition of Appeal he had appealed against both conviction and sentence, at the hearing of the Appeal, he admitted that he had committed the offence and was only seeking leniency on sentence.

2. I have perused the record of the trial court and even if the Appellant had pursued his appeal on conviction, I doubt that he would have succeeded. I say so because the evidence of PW2, Everlyne Ogaki which was largely uncontested, the Appellant on 3.11.2005 attacked her at 11 p.m. and seriously injured her.

3. The injuries were confirmed by **PW1, Henry Omusebe Ochaba, PW3, Oliver Mahaso**, the Clinical Officer. **PW5, PC Stephen Kamau** also recovered the weapon used and it was bloodstained. The accused gave no answer to the charge and his defence revolved around the manner of his arrest and not the credible and consistent evidence against him.

4. Although the Appellant was said to have been drinking alcohol prior to the incident, I am wholly unable from the scanty evidence on the point, to give him the benefit of doubt on account of intoxication.

5. In any event and on sentence, the Appellant was sentenced to 10 years imprisonment and yet **Section 234** of the Penal Code provides as follows;

“234 Any person who unlawfully does grievous harm to another is guilty of a felony and is liable to imprisonment for life..”

6. Noting that the victim of the vicious attack suffered serious head injuries and her friend Lillian died from the same claim of events, the sentence is lenient and I also note that the Appellant is in custody for the offence of murder in respect of the attack on Lillian aforesaid.

7. There being no merit in the Appeal, the same is dismissed.

8. Orders accordingly.

Delivered, dated and signed at Kakamega this 7th day of October, 2010

ISAAC LENAOLA
J U D G E