



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KERICHO
CRIMINAL APPEAL 30 OF 2007

(From original Judgment of A.G. Kibiru - SRM delivered on 8th May, 2007 at KERICHO)

MOSES KIPRUTO MUTAI APPELLANT

VERSUS

REPUBLIC RESPONDENT

JUDGMENT

I: Background

1. In this appeal, the appellant had been arrested and charged with the offence of **creating disturbances likely to cause a breach of the peace contrary to Section 95(1) (b) of the Penal Code.**
2. The complainant alleged that he went to enquire about his piece of land that the accused had sold to him being ½ an acre. The deceased lost his temper and took an axe and ran after him. The matter was reported to the police. The accused was arrested and the axe was later recovered in his house.
3. The accused denied committing the offence. He was convicted after trial and sentenced but released on being fined and later paying the said fine.
4. He appealed to this High Court where his appeal was heard.

In reply

5. The state said that the said evidence before Court shows the appellant did commit the offence.

Findings

6. The charge before Court under **Section 95(1) (b) 94(a)** of the penal code requires to have been committed in a public place. The incident occurred on a private land and area. I would accordingly find that the prosecution had not established their case beyond a reasonable doubt.
7. The appeal herein is allowed and is set aside unless otherwise appellant lawfully held the appellant is set at liberty.

DATED this 16th day of June, 2009 at **KERICHO**

M.A. ANG'AWA

JUDGE

Advocates

J.K. Rono advocate instructed by M/S J.K. Rono & Co. advocate for the Appellant – present

R.K. Koech Senior State Counsel instructed by the Attorney General for the State/Re

Appellant – present