



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KERICHO
Criminal Appeal 64 of 2003

1. Criminal Law
2. Criminal Appeal by STATE
 - (i) Offence of original Criminal Case Grievous Harm Contrary to Section 234 Penal Code.
Particulars of offence.
On 17th May 2001 at Iraa village within Kericho District of the Rift Valley Province jointly unlawfully did grievous harm to Samwel Kipkoech Lelgo
 - (ii) Complainant went to Respondent No.1's land.
 - (iii) Intention to remove logs and timber.
 - (iv) accuseds/respondents attacked him.
 - (v) Trial magistrate acquitted the respondent and co-accused.
3. appeal by State
Trial magistrate erred in evidence by acquitting the accused persons.
4. Respondent
 - (i) Charge sheet defective
 - (ii) no case made out.
5. Held; appellant dismissed.
6. Case Law
7. advocate.
 - S. K. Sigira Advocate instructed by the firm of M/S Siele Sigira & Co. Advocates for the Respondents.
 - B. L. Kivihya State Counsel instructed by the Attorney General for the Appellant

(Consolidated with CRA'S NOS.65 – 68 of 2003)

REPUBLIC - APPELLANT
VERSUS
PAUL KIBET CHEPKWONY & OTHERS - RESPONDENT

JUDGEMENT

I. Background.

1. This appeal is from the subordinate courts of Kenya at kericho.
2. The five respondents were original charged with the offence of **grievous harm** contrary to **section 234** of the **Penal Code**.
3. The particulars of offence being;

On 17th day of May 2001 at Iraa village within Kericho District of the Rift Valley Province jointly unlawfully did grievous harm to Samwel Kipkoech Lelgo.
4. A plea of not guilty was entered and the case proceeded to trial on a number of occasions.
5. After trial the five respondents were acquitted.
6. The State appealed to this High Court on 4th December 2002. The appeal has been pending since then.

7. The reasons of delay *inter-alia* is that the case could not be reached and the accused person had no proceedings to prepare their case. They were later presented by an advocate.

II. Appeal.

8. The State prays that the appeal be allowed. The case against the accused was proved beyond any reasonable doubt. The trial magistrate should have convicted. That there was no contradiction of the case and extraneous evidence was taken into account.

9. In reply the advocate for respondent stated that the case against the respondent was in order.

10. The State wants a re-trial.

III. Opinion.

11. The trial magistrate is the one who sees the demeanor of witnesses. The evidence recorded before the magistrate and reasons in coming to their decision is at their direction.

12. In this appeal I would not interfere in the magistrate's findings.

13. This appeal must fail. The complainant may file a civil suit in Tort against the respondents and for damages.

14. The appeal is dismissed.

Dated this 15th day of October 2009 at Kericho

M. A. ANGAWA
JUDGE

Advocates

- S. K. Sigira Advocate instructed by the firm of M/S Siele Sigira & Co. Advocates for the Respondents.
- B. L. Kivihya State Counsel instructed by the Attorney General for the Appellant