

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT MOMBASA

Criminal Revision 13 of 2009

REPUBLIC APPLICANT

VERSUS

SHABAN ROMAN MWALEWA RESPONDENT

RULING

This is a revision referred to the High Court by the learned Resident Magistrate Wundanyi Law Courts. The accused had been charged in the subordinate courts with the offence of Assault Causing Greivous Bodily Harm contrary to Section 234 Penal Code. The accused pleaded guilty to the offence and was duly convicted. The trial magistrate before sentence looked at the P3 form and formed the opinion that the conviction for Greivous Harm may not have been supported by the P3 form. She then referred the matter for review of that conviction.

I have perused the P3 form and I note that the complainant is indicated to have suffered a cut on the ear, bruises on the neck and both hands with bleeding from the ear. Without the evidence of a medical doctor it would be difficult to assess how serious these injuries were. The trial magistrate appears to believe that the injuries are minor. I do not concur with this opinion. Bleeding from the ear indicates some kind of internal injury. I note that in the P3 form the degree of injury was assessed by the doctor as “*maim*”. I have no reason to dispute this assessment since it has been made by a professional. In the same P3 form under “*Definitions*” the term *maim* is defined thus –

“Maim” means the destruction or permanent disabling of any external or internal organ, member or sense.”

In view of this definition the bleeding from the ear could well be described as “*maim*”. Further on the term “*Greivous Harm*” is described as –

“Greivous Harm” means any harm which amounts to maim, or endangers life, or seriously or permanently injures health or which is likely so to injure health, or which extends to permanent disfigurement, or to any permanent or serious injury to any external or internal organ.”

Thus it is clear that “*Greivous Harm*” includes “*Maim*”. As such I find that the charge was properly framed against the accused. The conviction in my view was proper and I find no reason to interfere with the same. I hereby direct that the learned trial magistrate proceed to sentence the accused in accordance with the law.

Dated and Delivered at Mombasa this 6th Day of November 2009.

M. ODERO

JUDGE