



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CRIMINAL DIVISION**  
*(Coram: Ojwang, J.)*  
**CRIMINAL APPEAL NO. 599 OF 2006**

**BETWEEN**

**CHARLES KOGI KAMURA .....APPELLANT**

**-AND-**

**REPUBLIC.....RESPONDENT**

*(An appeal from the Judgment of Senior Resident Magistrate **Ms. L. Mutahi** dated 13<sup>th</sup> December, 2005 in Criminal Case No. 1349 of 2005 at Githunguri Law Courts)*

**JUDGMENT**

The appellant herein was charged with the offence of causing grievous harm, contrary to s. 234 of the Penal Code (Cap.63). The particulars were that on 25<sup>th</sup> June, 1999 at Gachuguru Village in Kiambu District, within Central Province, he unlawfully caused grievous harm to **Pauline Wambui Chuchu**.

PW1, the complainant, testified that the appellant herein had assaulted her in 1999. On the material date she had been walking alone on the main road, heading towards her farm, at 6.30 a.m. She met the appellant, who was known to her. The appellant came up to the complainant and held her, upon which she called him by name, "**Charles**", and asked him what he was up to. The appellant suddenly hit the complainant with his fist, on the mouth. She screamed, and two people, **Mwaniki** and **Peter**, responded; but by the time these two arrived the appellant had knocked off two teeth from the complainant's upper jaw. She made a report at Kigumo Police Station, and was issued with a P3 form for medical reporting. As the complainant struggled when attacked the machete she had in her hands cut her, on the left hand and on the right palm.

Following the assault incident the appellant went into hiding, and did not return until both **Mwaniki** and **Peter**, who had come to help the complainant during the morning attack, had died. Upon his return, the appellant was arrested, and the Police invited the complainant to go and identify him. The appellant was a neighbour to the complainant, and she had known him over the years. There had been no disagreement between the two, and the complainant did not know why the appellant had attacked and assaulted her. After he disappeared in 1999, the appellant returned to the village only in 2004. PW1 testified that on the morning of the attack, the state of lighting was good, it was the time of sunrise, and she saw the appellant very well.

On cross-examination, the complainant said she had known the appellant since childhood. She said she believed, from information which was abroad in the neighbourhood, that the appellant had relocated to Nairobi after the assault incident.

PW2 **Dr. Samsom Gitonga**, produced a P3 medical-report form which had been prepared by a clinical officer (one **Kitema**) working under him. PW2 testified that he was familiar with the hand-writing of the said clinical officer who was no longer in service. On 25<sup>th</sup> June, 1999 at 8.30 a.m. the said clinical officer had examined the complainant who presented with a history of assault, committed by a person known to her. The clinical officer found that the complainant had two upper incisors missing, and her gums were bleeding; her face was swollen, and there were bruises on her lips. She had superficial cuts on both palms. The clinical officer had seen the complainant about one hour after the material time. It was his assessment that the weapon causing the injuries was blunt. The degree of injury sustained by the complainant was assessed as grievous harm.

PW3, Police Force No. 31552 **Sgt. Ben Ngure**, who was attached to Kibichoi Police Station, was on duty on 26<sup>th</sup> July, 2005 at 1.20 p.m. when the area Assistant Chief, **Daniel**, informed him of a suspect who had been arrested in the Kibichoi area. Upon interrogating the suspect, PW3 learned that this suspect had assaulted the complainant herein, in 1999 and had then disappeared. PW3 re-arrested the appellant escorted him to the Police Station, and commenced investigations which led to a charge being laid against the suspect. PW3 confirmed from Police records that a report of assault had been made by the complainant on 25<sup>th</sup> June, 1999. PW3, In the course of investigations, recovered the complainant's incisor teeth said to have been knocked out on the material day, as well as the relevant Police records. He produced these items as exhibits in Court.

Upon a ruling being made that the appellant herein had a case to answer, he opted to make an unsworn defence, with no witness. He later made a brief statement in which he said the Assistant Chief in charge of his village had gone to his home and arrested him on 26<sup>th</sup> July, 2005 but he did not know the reason for this arrest, and he had not at any time assaulted anybody.

Of the testimonies made before the trial Court, the learned Magistrate made her final assessment in the following terms:

*“The evidence of PW2 was clear and cogent. The P3 [medical-report form] exhibited by the witness was also clear [and] [tallied].....with the evidence of the complainant herein. The medical doctor did in his evidence confirm that indeed, the complainant was assaulted and injured on the material date..”*

*“[The complainant's evidence was very cogent and [was] unchallenged by the defence on cross-examination...; I had no reason to doubt her evidence ....The presence of the accused person at the scene of crime was not disputed. Even if PW1 was the only prosecution witness present at the time, I find that her evidence was very clear and without blemish, which evidence I had no reason to doubt.....”*

The learned Magistrate then concluded:

***“I found the prosecution's evidence very consistent and credible and, even if PW1 was the only witness present at the scene of crime, upon evaluating her evidence I found that the same was clear and that she was telling the truth.”***

The trial Court found the appellant guilty and, after he had made a mitigation statement, imposed a jail-term of six years.

In the grounds of appeal there is no contest to the findings on evidence; but there is a plea for leniency which states, *inter alia*, that the appellant is 45 years old; is married and is father to three children; is son to a poor, dependant mother. The appellant prays for reduction of sentence. He elaborated the foregoing

points in a set of written submissions which he handed over to the Court, and opted to make no oral submissions.

Learned counsel **Mr. Makura** contested the appeal, and urged that there was sufficient evidence to support the conviction, and the sentence of six years' imprisonment was entirely lenient.

Section 234 of the Penal Code (Cap.63) provides that:

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

This Court entertains no doubt that the appellant was properly convicted, on the basis of detailed, accurate and truthful evidence. A sentence of six years' imprisonment, out of a possible total of life imprisonment, does not appear unjust. Besides, this Court will not routinely interfere with a sentence imposed by the trial Court unless the sentence is shown to be unlawful, or harsh and oppressive, or out-of-tune with the circumstances attending the commission of the crime in question.

The evidence in this case shows an entirely unprovoked act of aggression, taking the form of a violent and most injurious assault, committed by the appellant against the complainant. The learned Magistrate, in imposing sentence, had rightly, in my view, taken those circumstances into account, and judiciously imposed the sentence now being challenged on appeal.

I hereby dismiss the appellant's appeal, uphold the conviction, and affirm sentence as imposed by the trial Court.

***Orders accordingly.***

**DATED and DELIVERED at Nairobi this 25<sup>th</sup> day of February, 2008.**

**J.B. OJWANG**

**JUDGE**

**Coram: Ojwang, J**

**Court Clerk: Huka**

**For the Respondent: Mr. Makura**

**Appellant in person**