



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL DIVISION**

*(Coram: Ojwang, J)*

**CRIMINAL APPEAL NOS. 398 OF 2006 & 399 OF 2006**

**(CONSOLIDATED)**

**-BETWEEN-**

**NANCY WANJIKU MAINA ..... 1<sup>ST</sup> APPELLANT**

**PETER NDERITU NDIRANGU ..... 2<sup>ND</sup> APPELLANT**

**-AND-**

**REPUBLIC ..... RESPONDENT**

*(An appeal from the Judgment of Senior Resident Magistrate M.W. Mwai dated 26<sup>th</sup> May, 2006 in Criminal Case No.110 of 2006 at Limuru Law Courts)*

**JUDGMENT**

The appellants, **Nancy Wanjiku Maina** and **Peter Nderitu Ndirangu**, were charged with three counts of assault causing actual bodily harm contrary to s.251 of the Penal Code. The particulars were that the appellants, on 1<sup>st</sup> January, 2006 at Kamirithu Village, Kiambu District, within Central Province, jointly and unlawfully assaulted **Simon Njogu Maina**, thereby occasioning him actual bodily harm. The particulars in the 2<sup>nd</sup> count were that on the said date and place, the appellants unlawfully assaulted **Josephine Mukami Njogu**. And in the 3<sup>rd</sup> count, the particulars were that the appellants, at the same place and date, unlawfully assaulted **Mary Wanjiru Njogu**, thereby causing her actual bodily harm.

The prosecution called six witnesses to testify to its case which was as follows. The three complainants are members of one family – a father and his two daughters. The accused are neighbours to the complainants. It was stated in the testimonies that on the material date, at 11.30pm, PW1 was driving to his home, and he had in his motor vehicle the two other complainants. When PW1 reached a certain section of the road which is exceptionally narrow, he found another motor vehicle parked on the road. After PW1 stopped his motor vehicle, 2<sup>nd</sup> appellant went up to him and pulled him out of his motor vehicle, while assaulting him by fist-blows. The 1<sup>st</sup> appellant joined in the fight; she pulled out a knife, and cut both PW2 and PW3. This incident was witnessed by PW4, who was PW1's wife.

The complainants reported the incident at Tigoni Police Station, on the night of the incident; and they also

went to hospital for treatment. The Police recovered from PW1's motor vehicle a torch, which the complainants said had been dropped in there by 1<sup>st</sup> appellant, as she struggled with the complainants and assaulted them.

It was PW6's (*Dr. Ngure* of Tigoni Hospital) testimony that he examined PW1 on the material night, and found PW1 with multiple bruises and nose-bleeding. PW6 also examined PW2, and found her with a cut wound on the right finger, which was likely to have been caused by a sharp object. And the doctor examined PW3 as well, finding her with a cut wound on the finger.

The appellants herein gave sworn defence, and called two witnesses. They said they had gone to escort their visitors and, as they stood at the gate for their visitors to drive away, they saw an on-coming motor vehicle. As the road was narrow, DW1 asked PW1 to reverse his motor vehicle; but PW1 refused to do so. DW1 then asked his visitor to reverse his motor vehicle – and his visitor started reversing the motor vehicle. When he reached the gate, PW1 who was a taxi-driver, drove towards 2<sup>nd</sup> appellant – forcing 2<sup>nd</sup> appellant to jump onto the bonnet of the advancing motor vehicle. PW1 then dashed out of his motor vehicle, wielding a *machete* which, however, he did not use against 2<sup>nd</sup> appellant; PW1, instead, drove on to his home. But in the meantime, PW2 had come out screaming. It was DW1's testimony that nobody was injured, and he reported the incident to Mutarakwa Police Post – which was the nearest Police office. After reporting, DW1 and DW2 went home; but, at about 2.00a.m. that night, PW1 came to his home with two Police officers, and DW1 and DW2 were arrested and taken towards the Police station, only to be stopped on the way by another Police officer who asked them to return home.

DW1 denied that the torch found in PW1's car was his, and denied that he had had a knife in his car as he drove home on the material night.

It was DW1's testimony that on 18<sup>th</sup> January, 2006 (more than two weeks since the material incident) he and DW2 were arrested and detained at Tigoni Police Station.

After assessing the evidence, the learned Magistrate remarked:

**“The issue now is whether the prosecution have proved their case as by law required.”**

The Court determined that there was evidence of bad blood between the respective families of the complainants and of the appellants herein – and that the same led to a struggle on the material night, in which injury was occasioned to the complainants.

The learned Magistrate's findings on fact, which this Court is in agreement with, are set out as follows:

**“The problem arose because the road is narrow...It seems to me that PW1 refused to move for the other motor vehicle and the accused persons were not happy. Due to the fact that the accused persons were not in good terms, the hostilities [became] physical and the complainants were injured...although it seems that the accused were provoked by PW1, they ought not to have become violent. The evidence we have on record points to the fact that the complainant herein did [sustain] actual bodily harm as a result of that encounter.”**

The trial Court found count 1 fully proved, as against 2<sup>nd</sup> appellant herein; and found 1<sup>st</sup> appellant guilty in respect of count 2. But count 3 was found to be not proved. The first appellant was convicted only on *count 2*; and 2<sup>nd</sup> appellant only on *count 1*.

In the petitions of appeal, the appellants had contended that the trial Court had convicted on evidence which was inconsistent; that proof-beyond-reasonable-doubt had not been achieved; that proper investigations were not conducted by the Police; that the prosecution witnesses had not said the truth.

Hardly any argument was made on the said grounds of appeal; instead, the point about reconciliation having since taken place, emerged as the most prominent matter.

On the respondent's part, learned counsel **Mr. Makura** urged that the appellants were properly convicted, and that the standard of proof attained had been beyond reasonable doubt. Counsel urged that the sentences imposed had been lenient, and there was no basis for the appeal.

As already noted, the learned Magistrate carried out an orderly and objective review of the evidence, and came to a finding which this Court must sustain.

Consequently, the appeals herein are dismissed; conviction in both cases upheld; sentence as imposed in respect of each appellant, affirmed.

***Orders accordingly.***

**DATED and DELIVERED** at Nairobi this 22<sup>nd</sup> day of September, 2008.

**J.B. OJWANG**

**JUDGE**

**Coram: Ojwang, J.**

**Court Clerk: Huka**

**For the Respondent: Mr. Makura**

**Appellants in person**