



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CRIMINAL DIVISION**  
**(CORAM: OJWANG, J.)**

**CRIMINAL APPEAL NO. 204 OF 2007**

**-BETWEEN-**

**JOSEPH MUKUNDI MWAURA.....APPELLANT**

**-AND-**

**REPUBLIC.....RESPONDENT**

*(An appeal from the Judgement of Senior Resident Magistrate L.K. Mutai dated 25<sup>th</sup> October, 2005 in Criminal Case No.630 of 2005 at Githunguri Law Courts)*

**JUDGEMENT**

The appellant was charged with causing grievous harm contrary to section 234 of the Penal Code (Cap.63, Laws of Kenya). The particulars were that the appellant, on 27<sup>th</sup> March, 2005 at 1.00 a.m. at Kiria Village in Kiambu District, within Central Province, unlawfully caused grievous harm to **Stephen Kibugi Mwaura**.

The complainant (PW1) testified that he was in his house at 1.00 a.m. on 27<sup>th</sup> March, 2005 when he heard noises from his mother's house. As she had been unwell, PW1 went out to see what was the matter. He then learned that his brother (the appellant herein) had gone at that late hour to their mother, demanding food. When PW1 asked why the old lady was being bothered, the appellant threatened him with harm, and indeed, followed PW1 to his house with a machete. The appellant went up to PW1's house, and started damaging the walls thereof. This situation deteriorated to the point where the appellant now cut the complainant with the machete, on the right-hand thumb. The complainant called out to another brother, who came and extracted the machete from the appellant's grip. The complainant reported the matter to the Police, who issued the necessary medical-reporting form.

PW5 (the doctor) confirmed that the complainant had been assaulted and injured on the material night, suffering grievous harm. PW5 found that the complainant's right digital thumb had to be amputated, as a result of the injuries which appeared to have been caused by a sharp object.

The learned Magistrate found that the complainant had been grievously hurt by the appellant herein; the two had met in their mother's house just before the attack. The trial Court was satisfied that the appellant herein was at the scene of crime at the material time, and that he was well identified by the complainant as the person who had attacked him.

The point on identification was not contested during the hearing. PW1's evidence was well corroborated by that of his mother (PW2) who confirmed that she had been unwell at the time, and that the appellant had gone to her house belatedly, to demand food, and that this was the occasion of the meeting between complainant and appellant. PW2 testified that the appellant had followed the complainant out of PW2's house, and shortly thereafter, she heard a commotion between the two. PW2 testified that it was her other son **Kihanya** (PW3), who snatched the machete which had just been used by the appellant upon the complainant.

PW3 testified that on the material night, his mother had called him to go and separate the complainant from the appellant; and at the *locus in quo*, he found the complainant holding the appellant tightly, and the appellant holding a machete; PW3 snatched this machete from the hands of the appellant, and at that time the complainant had been seriously injured.

The learned Magistrate found PW3's testimony clear, and unchallenged by defence evidence. The appellant was at the *locus in quo* and even if PW3 did not see him cut the complainant, the fact that he was at the scene, armed with a machete, is not in dispute; and he, the appellant, is the one who assaulted the complainant.

The trial Court found the prosecution case clear and consistent; the appellant was positively identified by PW2 and PW3 at the scene of crime and also in Court. The medical evidence confirmed the assault and injury to the complainant at the material time.

Before this Court, the appellant said he had been drinking with his brother, and he had no idea how a fight later broke out between them.

Learned counsel for the respondent, **Mr. Makura**, urged that the evidence adduced by the prosecution at the trial was overwhelming. The appellant had caused severe injury to the complainant which was classed as "maim", or "grievous harm." Counsel urged that the prosecution case had been proved by well corroborated, direct evidence, and that there was no basis for allowing the appeal. The appellant had been subjected to eight years' imprisonment, for causing grievous harm, where a maximum of life imprisonment was provided for by law.

The learned Magistrate's assessment of the evidence, in my judgement, is well-founded and must be sustained. The trial Court held the actions of the appellant to have been "unlawful at all material times"; and this Court upholds that finding.

In the result, the appeal is dismissed; conviction upheld; sentence affirmed.

**Orders accordingly.**

**DATED and DELIVERED** at Nairobi this 6<sup>th</sup> day of October, 2008.

**J.B. OJWANG**

**JUDGE**

**Coram: Ojwang, J.**

**Court Clerk: Huka**

**For the Respondent: Mr. Makura**

**Appellant in person**