



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**

**Criminal Appeal 200, 201, 2002, of 2008 (Consolidated)**

**JOSEPH NJUGUNA KAMUHU.....1<sup>ST</sup> APPELLANT**

**DANIEL KARANJA KAMUHU.....2<sup>ND</sup> APPELLANT**

**PETER MARIBA KAMUHU.....3<sup>RD</sup> APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

DANIEL KARANJA KAMUHU, PETER MARIBA KAMUHU and JOSEPH NJUGUNA KAMUHU, the Appellants, were charged with grievous harm contrary to **Section 234** of the **Penal code**. The particulars of the charge were that on 13<sup>th</sup> May 2006 at Karima Village in Nyandarua District within the Central Province, jointly with others not before court unlawfully did grievous harm to Francis Mutabai Kimari.

Francis Mutambai Kimari, the complainant, has had a long-standing boundary dispute with his neighbour John the latter Muriba. John the latter has built some structures on the former's land. The complainant got court order from Nyahururu Court to evict Kamuhu and demolish those structures. There was apparently an order that the demolition was to be done in the presence of surveyor who would point out the boundary beacons or marks.

On 12<sup>th</sup> May 2006, the court bailiff Jackson Cherutich Marende, PW4, went to Nyahururu to surveyor but he was told to proceed to the disputed land as surveyor could follow but the surveyors did not go. he spent a night at Kipiripiri and the following day complainant convinced him that he knew and could point out the boundaries. So he went to the site at about 12 noon with complainant, his two sons and 4 police officers. On arrival John Kamuhu was not at home but his wife was. On seeing them Kamuhu's wife screamed and her sons (Appellant's) who were on their shamba cultivating came with fork jembes shouting that their buildings could not be demolished in the absence of Settlement Officer and surveyors. They refused to listen to the court bailiff, PW4. As the court bailiff and police argued with them, the complainant decided to go away. When they saw him retreat they chased him and he slipped and fell. They then descended on him with their fork jembes. It is the police shots into the air that stopped them.

The complainant was taken to Ol'Kalou District Hospital and later transferred to North Kinangop. After treatment a P3 form was completed which shows that he suffered a fracture of the ulna and other injuries. The doctor classified the injuries as grievous harm.

Appellants were later arrested and charged with grievous harm. In their defences the Appellants raised alibis. 1<sup>st</sup> Appellant said he was at Wanjohi until 5.00 p.m., 2<sup>nd</sup> Appellant said that he was at his shop at Miharati until 8.00 p.m. while 3<sup>rd</sup> Appellant claimed he was at Geta, some 9 km away until 5.00 p.m. They all claimed that they learned of the attempted demolition of their houses from their mother when they returned home that evening. They called their mother Margaret Wairimu Kamuhu as their only defence witness. She testified that the appellants and her husband were away that day. When the

demolition squad arrived she screamed and about 100 people came and chased the squad away. According to her the complainant was injured when he fell.

On conviction, Mr. Chege for the appellants contended that the appellants' alibis were not dislodged. That contention cannot stand in the light of the overwhelming evidence on record against the appellants including that of the court bailiff and the police officers who accompanied him. These are independent witnesses who had nothing to gain by lying. Together with the complainant and his sons they identified the appellants as the attackers.

The other point raised by Mr. Chege was that there was no proper medical evidence the P3 having been produced by a clinical officer who did not complete it and did not know the author. That contention is also fallacious. The clinical officer, PW9, Peter Nginyo, not only knew doctor who completed the P3 form but had been transferred to Makindu District Hospital but was there when he completed the PW3. On the whole I agree with Mr. Mugambi for the state that there was overwhelming evidence against the appellants and I accordingly hereby dismiss their appeals against conviction.

On sentence I agree with Mr. Chege that there is nothing on record to justify the discrimination against the third Appellant in imposing a custodial sentence when the other two had been sentenced to a fine of Kshs.50,000/- each. In **Marando Vs Republic, [1980] KLR 114** the Court of Appeal held that, except for good reason, it is wrong in principle to impose different sentences on people who have been convicted of the same offence. As I have said there is nothing on record to justify the discrimination. I therefore set aside the sentence of seven years imprisonment imposed upon the three Appellant and substitute therefor a fine of Kshs.50,000/-. In default of payment of that fine the third Appellant shall serve one year's imprisonment from the date of his conviction.

Save with regard to the alternation of sentence as stated, I find no merit in these appeals and I hereby dismiss them in their entirety.

**DATED and delivered at Nakuru this 21<sup>st</sup> day of November, 2008.**

**D. K. MARAGA**

**JUDGE**