

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU
Criminal Appeal 5 of 2006

PURITY WANDIA KAGANE.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The State concedes this appeal saying the evidence tendered by prosecution was not sufficient to support conviction of appellant. It is clear that both complainants and appellant were involved in a scuffle in a place where members of public were to be found. The people who may have given independent evidence were not called by prosecution to give evidence although it is shown that many people were present. Therefore the offence which could have been charged was under section 92- affray. That offence requires that persons who engage in a fight in a public place be charged with a misdemeanor punishable with imprisonment for one year.

In this case the appellant was sentenced to a fine of Shs.30,000/= or in default 9 months imprisonment. In this case only the appellant was charged. The evidence is not sufficient to support the charge under section 251 Penal Code.

I therefore find that the conviction was based on insufficient evidence and since the state does not support the conviction, I allow the appeal and quash the conviction and set aside the sentence. The appellant shall be set at liberty forthwith.

It is so ordered.

Dated this 3rd July, 2007.

J. N. KHAMINWA

JUDGE

3/7/2007

Khaminwa – Judge

Mr. Maina Kagio for Appellant

Appellant present

J. N. KHAMINWA

JUDGE