

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
OF KISII

Criminal Appeal 184 & 186 of 2004

(From original conviction and sentence of the CM's court at Kisii in criminal case No. 1056 of 2002)

ZAPLON AMENYA ONCHERA)

EVANS BOI ONCHERA) APPELLANTS

VERSUS

REPUBLIC RESPONDENT

JUDGMENT:

This appeal was consolidated with Kisii HCCR Appeal No. 186 of 2004 and both heard simultaneously. Both appellants were convicted by the Senior Resident Magistrate Court Kisii for the offence of Grievous Harm contrary to s.234 Penal Code and each sentenced to five years imprisonment. Particulars were that on 19th May 2002 in Kisii Town they unlawfully did grievous harm to CYPRIAN MACHANI.

The prosecution case was as follows: Both appellants are nephews of the complainant who gave evidence as PW1. On the fateful day at 5 p.m. the appellant's brother one ELIJAH NYANGARESI (PW4) asked them why they had refused to assist him take their sick father to hospital. The appellants turned violent.

The first one went to his house and armed himself with a panga and an iron bar. They chased him to his home. He locked himself inside. They started to cut the door and the roof. Complainant arrived and talked to them. They looked down and PW4 opened the door. The issue was declared to have been resolved. However as the complainant left the first appellant stabbed him with a knife on the stomach. The second appellant held him as the 1st appellant tried to stab him a second time. They struggled and complainant managed to flee. He went to hospital where he was admitted.

Appellant denied the offence.

I have re-evaluated the evidence. I find the evidence was overwhelming and the trial magistrate properly convicted the two appellants. The incident happened at 5 p.m. PW1 the complainant candidly narrated how the two appellants attacked him. PW4 confirmed that he witnessed the attack. PW3 JOSEPH OTIENO OGORO also witnessed the incident. PW5 the clinical officer confirmed the injuries. There were no doubts that the appellants attacked and injured the complainants.

As for sentence they were each jailed for five years. Though they were first offenders the sentence was proper and not harsh. The maximum term provided for the offence is life imprisonment.

The injuries suffered by the complainant were serious. He had to be admitted for 9 months. The sentence was deserved.

I therefore find appeal by both appellants has no merit. The same is dismissed.

Dated 16th May 2006.

KABURU BAUNI

JUDGE

Cc – Mobisa

Mr. Kemo for Republic

Appellants absent