

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

ATKISII

Criminal Appeal 161 of 2005

GEOFFREY OTIENO OCHIENG APPELLANT

VERSUS

REPUBLICRESPONDENT

(From original conviction and sentence of the RM's court at Rongo in criminal case No. 349 of 2003)

JUDGMENT:

Appellant was convicted by District Magistrate 1 Rongo for the offence of Grievous Harm contrary to s.234 Penal Code and sentenced to five years imprisonment. The particulars were that on 28th May 2003 at Kadera Kwoyo sub-location in Migori District he unlawfully did grievous harm to WILLIAM OGOSI MANDERE.

Mr. Kemo the learned state counsel conceded to the appeal and pointed out that the prosecution was conducted by an unqualified person. Indeed this is so. The initial hearing was conducted by a corporal Mugo. S. 85(2) C.P.L. clearly provides that prosecution should be conducted by a police officer of the rank of Ass. Inspector of police or above. Corporal Mugo was not such that person and the prosecution was therefore illegal.

For the above reasons I allow the appeal and quash the sentence and set aside the sentence. Appellant be set at liberty forthwith unless otherwise legally held.

Dated 14th June 2006.

KABURU BAUNI

JUDGE

Cc – Mobisa

Mr. Kemo for State

Appellant present