



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KISII
Criminal Appeal 1 of 2004

JULIUS MATAYO KIRAKTA APPELLANT

VERSUS

REPUBLIC RESPONDENT

(From original conviction and sentence of the SRM's court at Nyamira in criminal case No.817 of 2003)

JUDGMENT:

Appellant JULIUS MATAYO KIRAKTA alias CHOMA was convicted on two counts of grievous harm contrary to s.234 Penal Code and sentenced to 12 years imprisonment in each count. He further was convicted on a charge of malicious damage to property contrary to s.339 (1) Penal Code and sentenced to 6 months imprisonment in count 3 and 12 years imprisonment in count 1 and 2. Sentence to run concurrently.

The complainant in count 1 Evans Makori told the court that on the material day at 2 p.m. he was in his house with his wife AGNES KEMUMA OKARI (PW2) the complainant in the 2nd count. He was eating. They also were with Daniel Kerongo Bundi and Charles Momanyi Makori. The appellant went and demanded his Radio cassette from PW1. Pw1 told him to go and bring his. They had exchanged their Radio cassettes. The appellant left.

He returned soon thereafter with Nyachieo Kiraka and Sirimbi Kiraka. Appellant got in the house through a window as the others stood at the door. They all had machetes. Appellant cut the complainant on the head and right shoulder. Agnes (PW2) was also cut on the left hand. The assailants fled. Both PW1 & 2 were taken to hospital where they were admitted. When PW1 was cut his coat and shirt were also damaged.

Appellant was arrested later and charged.

In defence appellant told court that it was the 1st complainant (PW1) who actually attacked him at his gate. He injured him on the left leg and he was taken to hospital.

This being a first appellate court I have re-evaluated the evidence. I find that the trial magistrate rightly found that the appellant attacked and injured the complainants and destroyed a coat and a shirt.

PW1 & 2 clearly narrated how they were attacked. Appellant and two others were armed with machete. Their evidence was corroborated by that of CHARLES MOMANYI (PW1) and DANIEL KERONGO BUNDI (PW6) who witnessed the incident. It took place in broad daylight. PW5 the clinical officer who examined them confirmed the injuries as described by the complainants. The evidence was overwhelming and the trial court came to the proper conclusion.

The appellant had stated in his defence that he was the one who was attacked by the complainant and injured. He called a witness DW2 who corroborated this. This evidence was considered by the trial magistrate and he properly disbelieved it.

I therefore uphold the conviction of the appellant in all the three counts.

As to the sentence the appellant has already served the 6 months imposed on count 3. In count 1 and 2 he was sentenced to 12 years imprisonment in each count. The prosecutor told court that he was a first offender and in mitigation he was said to be remorseful, married with children of tender age. The injuries suffered may have been serious but they were not said to be life threatening. I felt 12 years imprisonment was harsh and excessive in the circumstances. I set aside the sentence and substitute it with one of four (4) years imprisonment on each count to run concurrently.

Dated 14th June 2006.

KABURU BAUNI

JUDGE

Cc – Mobisa

Mr. Kemo for Republic

Appellant present