



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MOMBASA**  
**Criminal Appeal 119 of 2005**

**STANLEY I. KINABU.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

The Appellant was tried at the Resident Magistrate's Court at Wundanyi and convicted of the offence of injuring an animal contrary to Section 338 of the Penal Code and sentenced to seven years imprisonment. He has appealed against the said conviction and sentence.

Before me as before the lower court he maintained that he knew nothing about the charge. He said that he has had a long standing land dispute with the complainant PW 1. That, PW 1 confirmed in his testimony and added that he and the Appellant have for over 12 years not been in talking terms though they are immediate neighbours.

The main evidence however against the appellant is not that of the complainant but that of PW 2 a 10 year old school girl. The girl, though of tender years, was after *vior dire* examination found to understand the meaning of an oath and allowed to testify on oath. She said that on the 14<sup>th</sup> April 2005 her parents left her at home with her brother Phillis Samba. As she cut grass for their two cows one of them cut the rope with which it was tethered and went over to the Appellant's farm. When she attempted to go and drive it back, the Appellant threatened her. He then cut the cow thrice in the middle of its left hind limb between the root of the tail and the hip. The cow later alone went home and when her father returned home she reported the matter to him.

The evidence of the girl was corroborated by that of the veterinary officer, Boniface Charles Mwangemi Makuko PW 3 who treated the cow for the cuts. He said the cow had a 5 cm x 15 cm cut wound on gluttal muscle of the left hind limb.

Like the learned trial magistrate I find that the girl Irene Samba PW 2 was a honest and truthful witness. The Appellant did not cross-examine her or in any way challenge her evidence. She had no reason to lie against the Appellant. The land dispute between her father and the Appellant could not have made her fabricate a story against the Appellant, that is if she knew about it at all. I am satisfied that there was sufficient and credible evidence against the Appellant and his conviction was therefore proper. I accordingly dismiss the appeal against the conviction.

On sentence the offence with which the Appellant was charged carries a maximum sentence of 14 years imprisonment. The 7 years imprisonment imposed upon the Appellant cannot be said to be harsh. However given the fact that the animal must have fully healed and that the Appellant is a first offender I am inclined to interfere with it. I reduce it to four (4) years imprisonment.

Save for the appeal against sentence which I have reduced to four years imprisonment this appeal is otherwise dismissed.

DATED and delivered this 4<sup>th</sup> day of July 2006.

**D. K. MARAGA**

**JUDGE**