

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL APPEAL NO. 301 OF 2002

(From original conviction and sentence in Criminal Case No. 376 of 2002 of the Senior Resident Magistrate's Court, Molo – R. K. Kirui, Esq.)

PHILLIP KARIUKI MWANGI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The appellant has appealed against the original conviction and sentence in Senior Resident Magistrate, Molo Criminal Case No. 376 of 2002. In that case, the appellant had been charged for the offence of grievous harm contrary to Section 234 of the Penal Code. The facts of the prosecution case as stated in the charge sheet are as follows:

“On the 21st March, 1997 at Sirikwa Farm in Nakuru District of the Rift Valley Province, unlawfully did grievous harm to one Solomon Kimani Kamau.”

After a full trial, the appellant was found “guilty” and convicted accordingly. Consequently, the appellant was sentenced to 5 years imprisonment on 2nd October, 2002. During the hearing of the appeal, the appellant complained that he had been treated unfairly by the Lower Court. Besides the above, the appellant also stated that the complainant never produced the panga that had allegedly been used during the attack despite claiming that he knew where the same was. Apart from the above, he also took issue with the complainant’s assertion that his home was about 30 metres from that of the appellant.

On the other hand, the State through Mr. Gumo, Assistant Deputy Public Prosecutor supported both the conviction and sentence. According to Mr. Gumo, though the case was initially handled by a D. M. II (Prof.), it was later transferred to a Senior Resident Magistrate who heard the case de novo – and hence the appellant never suffered any prejudice. In addition to the above, Mr. Gumo submitted that the incident occurred in 1997 in broad daylight and that the parties knew each other very well. Apart from the above, Mr. Gumo also submitted that the complainant had suffered severe injuries as shown in the Medical Report. In fact, according to Mr. Gumo, the appellant almost killed the complainant. Thereafter, the evidence of the complainant was sufficiently corroborated by that of the PW4. That apart, Mr. Gumo also submitted that after the incident, the appellant fled from the area for about 5 years before he was spotted and arrested.

This Court has carefully perused the above together with the record of appeal that contains the judgment of the learned Magistrate. As the first appellate Court, I have the obligation to re-evaluate and re-examine the evidence afresh and reach an independent conclusion. This Court appreciates and is also alive to the fact that it never had the advantage and opportunity to peruse the manner and demeanour of the witnesses. That apart, this Court also has an obligation to peruse and consider the grounds of appeal – as stated in the case of ***Okeno Vs Republic [1972]***.

From the evidence on record, it is crystal clear that the incident took place at around 8.20 a.m. which was

broad-daylight. Apart from the above, it is not in dispute that the parties knew each other very well and hence the question of mistaken identity does not arise. The fact that the appellant disappeared for about 5 years clearly show that he was trying to hide from the long arm of the law. The story of the complainant was confirmed and corroborated by the PW3 – Obiero Nisati who was by then a Clinical Officer at Kericho District Hospital.

Having perused the grounds of appeal carefully, I hereby find that the same have no merit at all. This Court is of the considered opinion that the learned Magistrate evaluated the evidence properly and reached the correct conclusion. The conviction is safe and wellmerited and hence I hereby uphold the same.

As far as the sentence is concerned, the maximum provided by the law is life imprisonment. Therefore, the sentence of 5 years is lawful and lenient given the serious injuries that the complainant sustained. In view of the above, I hereby confirm the sentence of 5 years imprisonment.

The upshot is that I hereby dismiss the appeal since the same has no merits at all.

MUGA APONDI

JUDGE

Judgment read, signed and delivered in open Court in the presence of the appellant and Mr. Gumo, Assistant Deputy Public Prosecutor.

Right of appeal explained.

MUGA APONDI

JUDGE

31ST MARCH, 2005