



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
CRIMINAL APPEAL 337 OF 2003

JOHN SIGIRI OLE SIRON.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

The Appellant has appealed against the original conviction and sentence in the Narok Senior Resident Magistrate's Criminal Case No.215 of 2003. In that case, the Appellant had been charged for the offence of Grievous Harm, contrary to Section 234 of the Penal Code.

Consequently, the learned Magistrate viz, Mr. P. Okile, Resident Magistrate sentenced the Appellant to 6 years imprisonment with 4 strokes of the cane. During the hearing of the appeal, the Appellant denied committing the offence and also added that the people who were involved in the fight were not arraigned in Court.

However, he specified that the assailant was in Court with the sword. The Appellant also explained that the Appellant was staying two kilometres from his home. As far as the Appellant was concerned, he was framed by the complainant who wanted to grab his heads of cattle despite the fact that he was poor. Besides the above, the Appellant also lamented that his wife passed away in 1999. He also recalled that the complainant is his brother-in-law who does not want to pay the remaining dowry.

The Appellant concluded by stating that his mother is aged over 80 years and that he is the last born.

On the other hand, the state through Mr. Koech, Senior State Counsel has not opposed the appeal on the ground that the prosecution was conducted by PC. Ihaji. Apart from the above, Mr. Koech also observed that the Appellant had already served more than half the sentence and therefore, he saw no need to urge the Court to order for a re-trial.

A review of the above clearly show that the prosecution was conducted by one PC. Ihaji who was not an authorized nor qualified officer. Section 85 of the Criminal Procedure Act states as follows:-

- (1) The Attorney-General, by notice in the Gazette, may appoint public prosecutors for Kenya or for any specified area thereof, and either generally or for any specified case or class of cases.***
- (2) The Attorney-General, by writing under his hand, may appoint any advocate of the High Court or person employed in the public service, not being a police officer below the rank of Assistant Inspector of police, to be a public prosecutor for the purposes of any case.***

(3) Every public prosecutor shall be subject to the express directions of the Attorney-General.

In addition to the above, it is apparent that the Appellant started serving his sentence from 9th July, 2003. That means that he has already served about 2 years and a month. In its wisdom, the State through Mr. Koech, Senior State Counsel has not opposed the appeal.

Given the above analysis, I hereby concur with the sentiments of the State that I should concede to the appeal. The upshot is that the conviction is hereby “quashed” and the sentence of 6 years and 4 strokes of the cane is hereby set aside.

Given the fact that the Appellant has already served over 2 years of the sentence, it would not be fair and just to order a re-trial.

The Appellant should be released forthwith unless held lawfully.

Those are the orders of the Court.

MUGA APONDI

JUDGE

Judgement read signed and delivered in open Court in the presence of the Appellant and Mr. Njogu, State Counsel.

MUGA APONDI

JUDGE

28TH SEPTEMBER, 2005