



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NYERI**

**Criminal Appeal 203 of 2003**

**ALEXANDER MAINA NDIRANGU.....APPELLANT**

**Versus**

**REPUBLIC.....RESPONDENT**

*(Being an appeal from the judgment of R. N.*

*Muriuki, Resident Magistrate, dated 16th June 2003,*

*in the Resident Magistrate's Court at Kangema,*

*Criminal Case No. 168 of 2003)*

**JUDGMENT**

The Appellant was charged with assault causing actual bodily harm contrary to *Section 251 of the Penal Code* particulars alleging that on 20th February 2003 at Kagumoini Village in Muranga District the Appellant unlawfully assaulted Lydiah Njeri Maina thereby occasioning her actual bodily harm.

In the second count the Appellant was charged with malicious damage to property contrary to *Section 339(1)* of the Penal Code, particulars alleging that on the 20th February 2003 at Kagumoini Village in Muranga District within Central Province, the Appellant willfully and unlawfully destroyed or damaged one blouse valued at Ksh.200/= the property of Lydiah Njeri Maina.

The Appellant was convicted of each count and fined and paid the fine. Has appealed against the conviction and sentences.

I have looked at the recorded evidence in the light of submissions before me during the hearing. I find there was sufficient evidence proving assault by the Appellant against the Complainant – Lydiah Njeri Maina, in this matter where there is an unresolved land dispute between the Appellant and the Complainant's family. There is no evidence of a framed up assault case. There is medical evidence supporting the offence of assault. The parties are relatives. Incident during the day and there was the evidence of P.W.3 to support what P.W.1 said concerning the assault incident.

I, however, agree with what Mr. Orinda, State Counsel, said to the effect that count two ought not to have been there as count one covered sufficiently all that which happened during the assault.

In the circumstances, I do hereby dismiss the Appellant's appeal against his conviction and sentence in count one.

I, however, do allow his appeal against the conviction and sentence in count two.

Quash the conviction on count two and set aside the sentence on count two. The fine of Ksh.2000/=, if paid, be refunded to the Appellant.

*Dated this 20th December 2005*

**J. M. KHAMONI**

**JUDGE**

**Present:**

**Appellant In Person**

**M/S Ngalyuka for the Republic**

**Gikaria Court Clerk**