



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

CRIMINAL APPEAL NO. 34 OF 2003

JACKSON NJERU NJAGA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGEMENT

This is a joint judgment in Cr.Appeal No. 34 of 2003 filed by Jackson Njeru Njagi and Cr.Appeal No.35 of 2003 filed by Paul Muringi Njeru, both appeals having been consolidated for hearing.

Paul Muringi Njeru who was present and addressed the court did not say much.

I have however, had the opportunity to read their respective grounds of appeals. I have also read the recorded evidence and have heard what the learned state counsel, Mr. Omwega, has said supporting the conviction pointing at the evidence of oPW2 and PW1 as supporting the evidence of the complainant PW3.

With due respect, I find the brief evidence of PW2 lacking in precision. PW1 THE clinical Officer created more problems. In his evidence the age Of injury on the complainant was one day yet the complainant went to see him on 22nd May, 2001 and he examined the complainant on 24th May 2001.

The assault is alleged to have taken place on 20th May 2001.

When I looked at the trial magistrate's hand written record, I discovered that someone has interfered with the dates the magistrate had recorded originally.

I do not know whether it is the magistrate himself.

The complainant, PW3, who told the court that PW2 saved him said he went to hospital for medical examination on 21st May 2001 and that the P3 form was filled on 25th May 2001.

It would appear that there had been another encounter between the Appellants and the complainant previously and this prosecution was not undertaken with a view to bringing out the facts clearly.

It looks to me that there was no real police investigation in the matter and all that the police did was simply to take the case to court when the complainant insisted that the police do so. The evidence adduced is therefore, not only inconsistent but also insufficient and cannot sustain a conviction.

Accordingly, the appeal of each Appellant is hereby allowed. His conviction quashed and the sentence imposed upon him set aside.

Each Appellant be set at liberty forthwith unless lawfully detained in some other cause.

Dated delivered and signed at Embu, this 5th day of March, 2004.

J.M. KHAMONI

JUDGE

PRESENT: Appellant in Cr. App. No.35/2003

Mr. Omwega for the state