



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT BUSIA  
CRIMINAL APPEAL NO. 61 OF 2003**

**(From Original Busia Criminal 1131 of 2002 before B. Maloba SRM)**

**ALI NAKITARE MUSA ..... APPELLANT**

**VS**

**REPUBLIC ..... RESPONDENT**

**J U D G M E N T**

The appellant was tried on a charge of grievous harm contrary to section 234 of the Penal Code. The particulars are that on the 10th day of August 2002 at Bondeni Estate, Busia township location in Busia District within Western province, unlawfully did grievous harm on Mary Naliaka Odhiambo. The appellant was convicted and sentenced to 4 years imprisonment. Being dissatisfied he now appeals against both his conviction and sentence.

The prosecution summoned three witnesses to support its case before the trial court. The complainant who testified as P.W. 1 informed the trial court that she was washing clothes at her residence in Bondeni Estate, Busia township when the appellant suddenly came and stepped on the clothes. He is a neighbour to her. The appellant took a stone and hit the complainant on the head. She visited Busia District Hospital where she was treated and her P 3 form which had been issued to her by the police filled by PW 3, Thomas Ndiege who is a Clinical officer. He formed the opinion that the complainant was injured with a blunt object which confirms the evidence of P.W. 1. He found also that the complainant had a cut wound on the forehead which was stitched at the Busia District hospital. The P3 form was produced in evidence which shows that the injury was grievous harm.

The appellant gave unsworn statement in his defence where he made a general denial.

On appeal the appellant raised the issue that the trial court erred in relying on the testimony of P.W 1, the complainant which was not corroborated by an eye witness. This ground was opposed by the learned Senior state counsel who pointed out that the evidence of P.W 1 was corroborated by the evidence of P.W 3 the Clinical Officer.

The evidence on record shows that the complainant had testified to the effect that he was injured on the head when the appellant hit her with a stone. P.W 3, Thomas Ndiege said that the complainant had a cut wound on the occipital region which he said was probably caused by a blunt object. This evidence was found by the trial court to be consistent with the complainant's evidence. I have evaluated and reviewed the evidence and have come to the same conclusion that the evidence of P.W 1 was corroborated by the evidence of P.W. 3. I think the trial magistrate came to the correct decision that the prosecution proved its case to the standard of beyond reasonable doubt.

The other ground the appellant put forward is that the sentence is manifestly excessive. What is clear is that the trial magistrate did not consider the fact that the appellant is a first offender. The law provides a sentence of life imprisonment. I find that though the learned Senior Resident Magistrate did not consider the fact that the appellant was a first offender, the sentence tendered was not excessive hence there was no miscarriage of justice. A custodial term is appropriate in this case.

Consequently this appeal is dismissed for lacking in merit.

**DATED AND DELIVERED THIS 4th DAY OF June 2004**

**J.K. SERGON**

**JUDGE**