

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL APPEAL NO.287 OF 2003

(From original conviction and sentence of the Chief Magistrate's court at Kisii in criminal case No.712 of 2003)

EVANS ONTONYI MOMANYI APPELLANT
VERSUS
REPUBLIC RESPONDENT

JUDGMENT:

The appellant was convicted and sentenced to 3 years imprisonment by SRM Kisii for the offence of Grievous Harm c/s 234 of the Penal Code. The particulars were that on 15th March 2002 at Nyamecheo Location in Gucha District unlawfully did grievous harm to QUEEN BIYAKI.

In submission Mr. Anyona said the judgment delivered was not dated and was therefore defective. However this is not so. I have gone through the original judgment and it is shown to have been dated "3rd day of October 2003." The submissions therefore have no basis.

As to conviction I find the evidence in the lower court was overwhelming. PW1 the complainant candidly explained how the appellant attacked her after she had sent her child to ask him return her cow. The appellant did admit he was keeping the complainant's cow.

PW2 the complainant's daughter was present when complainant was attacked and injured. Also PW4 ROSE MORAA said she was present when she was attacked by the appellant. Their evidence was very consistent and had no contradiction at all.

PW5 LAWRENCE AKOYA the clinical officer confirmed examining the complainant. She had multiple injuries inflicted by a blunt object. Complainant had attacked the appellant with a metal bar.

Indeed appellant said he got a report on 17/3/02 that complainant had been injured. However the evidence adduced was very clear that he was the one who attacked her. The learned trial magistrate was right in rejecting his defence.

I therefore find appellant was properly convicted. I uphold the conviction.

As to sentence appellant was sentenced to 3 years imprisonment. The offence itself is serious and the injuries were extensive. However he was a first offender. Court has been told he is 65 years old and sickly. He has children who depend on him. 3 years imprisonment was excessive in the circumstances. I set the sentence aside and substitute it with one of 18 months imprisonment.

KABURU BAUNI

JUDGE

27/7/04

Dated and delivered on 27th July 2004.

KABURU BAUNI

JUDGE