

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII
CRIMINAL APPEAL NOS. 271 AND 277 OF 2003

**(From original convictions and sentences of the Chief Magistrate's Court at Kisii
in Criminal Case No.1471 of 2002 – O. OPONDO - S.R.M)**

1. JULIUS OGEMBO GICHANA)
2. EVANS MURURA GICHANA) APPELLANTS
VERSUS
REPUBLIC RESPONDENT

JUDGMENT

The two appellants were convicted for the offence of assault c/s.251 of the Penal Code. They have appealed against both conviction and sentence.

The evidence against the appellants was overwhelming. They were identified by the complainant. PW2 their younger brother also testified that they armed themselves with stones and axes and went to wait for the complainant at a place he used to always pass through from his kiosk.

I therefore find that both were properly convicted and I uphold the conviction.

As for the sentence the two appellants were treated as first offenders. They pleaded for leniency in mitigation. The injuries suffered by the complainant were superficial. In the circumstances the sentence of 18 months without a fine option was excessive. I set it aside and substitute it with one for the period already served.

Appellants be set at liberty unless otherwise legally held.

KABURU BAUNI

JUDGE.

27/7/04

Dated and delivered on 27th July 2004.

KABURU BAUNI

JUDGE.