

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII
CRIMINAL APPEAL NO.276 OF 2003

**(From original conviction and sentence in Criminal Case No.1773 of 2001 the
Chief Magistrate's Court at Kisii. – O. OPONDO ESQ., S.R.M)**

FRANCIS OSORO MONGARE APPELLANT
VERSUS
REPUBLIC RESPONDENT

JUDGMENT

Appellant was charged and convicted for the offence of Grievous Harm c/s.234 Penal Code. It was alleged that on 18th September 2001 at Getheri s/location he did grievous harm to ZEKARIAH OKWORO MONGARE. He was sentenced to 3 years imprisonment.

Appellant faced a second charge of malicious damage to property c/s. 339(1) P.C. but the trial court was silent in its judgment over this charge. PW1 the complainant had told court that they had a long standing land dispute with the appellant who is his brothers. The land was surveyed and the complainant given 3 months to remove his trees from appellant's land. He felled down the trees and on 18/9/01 he found appellant carrying away the felled trees. He asked him why. The appellant attacked him with a panga inflicting a deep cut on top of the head. Complainant fell down and was rushed to hospital where he was admitted for 2 weeks. Report was made to police. Appellant was arrested.

When put on his defence appellant chose to remain silent. I find the trial court properly convicted the appellant. The evidence was overwhelming.

As the trial magistrate found the incident took place in broad day light. PW2 the complainant's wife witnessed the appellant cutting the complainant. PW4 Isaya Okworo was with the complainant and he too corroborated his evidence. PW3 the Clinical Officer confirmed the injuries. There was therefore no doubts that the appellant attacked and injured the complainant. The connection was therefore proper and I uphold the same. As to sentence the appellant was jailed for 3 years. The offence carries a maximum of life imprisonment. The court was told that at the time the appellant was serving a probation sentence for assaulting the same complainant. Further the injuries inflicted were serious. He inflicted a deep cut wound in the middle of the head. Complainant was lucky that the skull was not fractured. I feel the sentence of 3 years was proper in the circumstances and I therefore decline to interfere.

In the circumstances I dismiss the appeal against both conviction and sentence.

KABURU BAUNI

JUDGE.

6/7/04

Signed, dated and delivered on 6th July 2004