



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MACHAKOS**  
**APPELLATE SIDE**  
**HIGH COURT CRIMINAL APPEAL NO. 187 OF 2003**

**BENJAMIN MUNYAO NGATA .....APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

**(From the Original Conviction(s) and Sentence(s) in Criminal Case No. 11 of 2003 of Senior Resident Magistrate's Court at Kangundo: N.N. NJAGI on 14/2/03)**

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

This is an appeal against the judgment of the Senior Resident Magistrate Kangundo Court in Criminal Case No. 11/03 where the appellant was charged with the offence of assault causing actual bodily harm and a second charge of malicious damage to property Contrary to Section 339 (1) of the Penal Code. The appellant was convicted and sentenced to three and half (3 1/2) years on each count and five (5) strokes on count one and the sentences were ordered to run consecutively. He was aggrieved. The main grounds upon which the appellant relies upon in his petition of appeal are that the magistrate failed to consider evidence of an existing land dispute between the appellant and the complainant who is his uncle; that the evidence adduced was not corroborated and that the sentence of seven (7) years imprisonment is manifestly harsh. The appellant hardly said anything in his submissions.

The learned state counsel Mr O'Mirera opposed the appeal. His contention is that there is overwhelming evidence on record against the appellant as he assaulted the complainant in broad day light and his evidence was corroborated by that of PW 2 and that in respect of count two the appellant broke the complainant's chair intentionally. He supported both the conviction and sentence save for the corporal punishment on count one.

Briefly stated the facts of the case before the lower court were that PW 1 went to the home of his brother who is PW 3. The appellant is the nephew of both PW 1 and 3. The appellant also went to that home of PW 3. On PW 1 enquiring why appellant had gone to that home, the appellant said he would go to that home by force and appellant wanted to hit him with bungles. PW 1 tried to block it with his left hand and the hand was broken and then he released PW1.

Later on 24/12/02 the appellant again went to PW 3's home and found PW 4 appellant's brother and said he would do what he wanted in the compound. He took the chair and broke it. PW 3 was informed and came home the next day. The appellant was later arrested and charged for the offence of assault and malicious damage to property. The injuries on PW 1 were classified as harm. In his defence the appellant merely stated that the evidence adduced in court was lies and it was a result of a family dispute.

Having reviewed the evidence on record, to my mind I find that PW1 and PW 3 were totally truthful. The

appellant is the nephew. There must have been a reason why appellant was barred from going to PW 3's home. The two witnesses, however, denied there being any dispute between them and the appellant on one hand. Though the appellant alleged a dispute between them, he never alluded to any in cross examination or his defence. However, there is no reason to doubt PW 1's evidence. There was no requirement for corroboration of his evidence. PW 4 found that indeed PW 1 suffered injuries on the wrist. The issue of identification did not arise the parties having known each other. I will reach the same finding that the lower court reached, that it is appellant who assaulted the complainant.

In respect of the 2nd charge, the evidence was that the appellant broke PW 3's chair worth 1,500/=. The court was never told what type of chair it was. No evidence was adduced in respect of the value of the chair and that charge was not proved beyond any doubt and the appellant should have been given the benefit of doubt and acquitted.

In my judgment, I confirm the conviction on count one but quash conviction on count two.

The sentences were harsh in the circumstances. Appellant was treated as a first offender.

The complainants are his relatives and the court should have tried to promote reconciliation and try to have appellant rehabilitated by serving non custodial sentence.

The magistrate went further to order that the sentences run consecutively. It was manifestly harsh, especially considering that the value of the chair in count two was never established.

The appellant has so far served one year, nine months which is sufficient for count one in the circumstances.

The sentence on count two is set aside and the appeal succeeds on that count alone. The appellant is sentenced to serve the sentence already served and is set at liberty forthwith unless otherwise lawfully held.

Dated at Machakos this 7th day of December 2004

**R.V. WENDOHO**

**JUDGE**