



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL APPEAL NO. 799 OF 2001**

**(From Original Conviction and Sentence in Criminal Case No.457 of 2000 of  
the Senior Principal Magistrate's Court at Kajiado)**

**BERNARD LEKASI..... APPELLANT**

**Versus**

**REPUBLIC..... RESPONDENT**

**JUDGEMENT**

The Appellant was charged in the lower court with assault causing actual bodily harm contrary to section 251 of the Penal Code. He was convicted and sentenced to pay a fine of 5000/= in default 8 months imprisonment. Being dissatisfied with the above conviction and sentence the appellant filed this appeal through Mr. Masese. The state was represented by Miss Okumu who opposed the appeal and supported the conviction. The grounds of appeal relied on by the appellant related on allegation that the trial magistrate erred in relying on corroborated hearsay evidence. It was also claimed that the prosecution charged the appellant as an after thought after he threatened to sue the A.G. for false arrest after the police had delayed for too long to sue him. The trial magistrate is also said to have erred in relying on it.

Mr. Masese argued the appeal on behalf of the appellant. Miss Okumu did not agree with Mr. Masese's submissions. I have carefully considered Mr. Masese's submissions. I have also closely perused the learned trial magistrate's trial record as well as the judgment. The complainant who was a child of tender years knew the appellant for a long time. The incident took place in broad day light and P.W.2 witnessed it. Both P.W.1 and P.W.2 gave evidence which implicated the appellant with having assaulted the complainant (P.W.1). Since P.W.1 was a child of tender years it was not unusual for someone else to report the matter to the police on his behalf and even to identify the appellant on his behalf during appellant's arrest. The fact that the state delayed in prosecuting the appellant with this charge did not prejudice the appellant as Mr. Masese submits. There was no way P.W.1 would have mistaken his assailant in broad day light.

I am satisfied that the grounds of appeal raised in favour of this appeal have no basis and I am not satisfied that any of them have been established.

I am satisfied with the trial magistrate's finding that P.W.2 was a truthful witness. I dismiss the appellant's appeal against conviction. I am satisfied that the sentence meted out on the appellant was equally well considered and reasonable. I also dismiss the appellant's appeal in so far as the case relates to the sentence. Appeal against conviction and sentence dismissed accordingly.

**R.M. MUTITU**

**JUDGE**

**10/4/2003**

**Delivered dated and signed in the presence of Miss Nyamosi for the state and Mr. Masese for the appellant and in the presence of the appellant.**

**R.M. MUTITU**

**JUDGE**

**10/4/2003**