

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

CRIMINAL APPEAL NO. 60 OF 2002

JEREMIAH NYAGA PETER.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The Appellant JEREMIAH NYAGA PETER was convicted on the offence of assault causing actual bodily harm contrary to Section 251 of the Penal Code in that on the 22nd September, 2000 at Thumaita village in Kirinyaga District unlawfully assaulted Florence Wangui Nyaga thereby occasioning her actual bodily harm.

It was the prosecution's case that the Complainant Florence Nyaga, a primary school teacher, while preparing supper in her kitchen, was threatened by the Appellant, her father-in-law. It was her evidence that he caught her by the shoulder and pulled her out of the house. He then tore her dress that she was wearing, took a panga that was nearby, raised it up with the aim of cutting her. She caught hold of the Appellant's hand which was holding the panga and in the process of the struggle she was cut on the lower lip. She went to see the doctor who stitched the cut. While they were struggling she screamed and Lily Muthoni, a daughter of the Appellant came and snatched the panga from them. The quarrel was about the avocado. In cross-examination, she stated that they had been living peacefully except on the material day. She objected to people picking the avocados as they were interfering with her crops. P.W.2 Lily Muthoni Kibandi, a daughter of the Appellant, testified how the Appellant came home and he was in a bad mood and armed with stones. He chased her away and she hid in the coffee plantation. She then heard screams and when she came out she found the Appellant and the Complainant struggling over a panga. The Complainant was bleeding from the lower lip. She took the panga and ran away. Richard Kabiru, a clinical officer, testified that he examined the Complainant and found a cut on her chin muscles. P.C. David testified how he received a report from the Complainant having been cut with a panga on the lower lip. He booked the report in the O.B. and then issued her with a note for treatment. He also issued her with a P.3 form. In cross-examination he said he did not see any bandage on the wound.

The Appellant gave a sworn statement and denied assaulting the Complainant. It was his evidence that on the material day he instructed his daughter Lucy Wangari to sell avocado fruits to a lady by the name of Shiru. When he came back he learned that the Complainant had refused to have the avocado fruits sold. He sat down and called the Complainant who came carrying a sharp panga. He saw that she was about to strike at him and he dashed and caught the sharp side of the panga. He was cut on the ring finger. They were separated by one called Gatu who took possession of the panga. It was his evidence that the panga in court belonged to the Complainant. D.W.2 Jane Muthoni Nyaga, a business lady, testified how she had agreed with the Appellant to come and get the avocados from the Appellant's home. She was refused by the Complainant. D.W. 3 Lucy Wangari, a daughter of the Appellant, corroborated her story.

I have carefully evaluated the evidence adduced before the lower court and I notice that this is a family dispute involving a daughter-in-law and a father-in-law. The dispute is basically the ownership of the avocado fruit tree. According to the Appellant, he planted the avocado tree and he has already shown the Complainant and her husband where they are to move and put up their residence. According to the Complainant she is the one who planted the avocado tree on a date she does not remember.

The offence is alleged to have been committed on the 22nd September and the Complainant reported to the police on the 23rd September at about 1.00 p.m. according to the investigating officer. When the Complainant reported to the police she was not having any bandage on the injured part.

The Complainant, however, stated in her evidence that she went to hospital and was stitched. If indeed she was stitched by the time she was reporting to the police, she would definitely be having a bandage on her lips. According to the evidence of the clinical officer the cut was on the chin while according to the evidence of the Complainant and P.W.2 the cut was on the lips. There is definitely a difference between a lip and a chin. Having evaluated the evidence I am not satisfied that the prosecution proved its case beyond reasonable doubt. I therefore allow this appeal and quash the conviction. The fine paid by the Appellant to be refunded to him.

Dated this day of 2003

J. V. O. Juma

Judge