

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
CRIMINAL APPEAL NO.375 OF 2003

PAUL LENGURO.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

The applicant has filed this appeal through his advocate challenging both the conviction and sentence imposed against him in the Senior Resident Magistrate’s Court at Maralal. He had been charged with the offence of ASSAULT CAUSING ACTUAL BODILY HARM contrary to Section 251 of Penal Code.

The first ground of appeal was that the charge was never read to the Appellant. That the record does not indicate at what stage the charge was read. All it indicates is the appellant’s response in which he admitted assaulting his father who was the complainant in the case.

The Learned State Counsel conceded that point adding that for that reason alone the plea was equivocal.

The other ground raised was that the Learned Trial Magistrate gave no consideration to the relationship between the complainant and the appellant nor considered reconciling them under Section 176 of the Criminal Procedure Code. The Learned Counsel conceded both points and added that C.S.O. was also a good alternative to reconciliation.

I have considered this appeal. I do agree with both counsels that it is not indicated anywhere that the court ever read the charge to the appellant. Further and equally important, I am not satisfied that the facts as led by the prosecution disclosed the offence of Assault occasioning actual bodily harm. The injury or harm occasioned to the complainant, as far as the facts of the case are concerned were pains.

It reads in part:-

“At that moment, the accused person started kicking the complainant in the stomach. The complainant received severe pains...”

The facts of the case did not disclose the offence charged. It seems rather to establish the charge of common assault under Section 250 of the Penal Code. In the circumstances the charge was also wrong and the sentence excessive.

The failure to indicate whether the charge was read to an accused person is a serious omission. Not only should the court state that the charge was read over to the accused but it must go further to state the language in which it was read and explained to him and whether or not he understood that language. See Law, Miller and Potter, JJA., in **OMBENA –V- REPUBLIC**. 1981 KLR 450. At page 455 they set out the steps a trial court should follow while taking a plea from an accused person. Clearly in this case, these were not followed rendering the plea equivocal and the whole process irregular.

Accordingly I set aside the conviction and sentence imposed herein and order that the appellant be set at liberty forthwith unless otherwise lawfully held.

Orders accordingly.

JESSIE LESIIT

JUDGE

Dated, signed and delivered this 14th day of August, 2003, at Nakuru.

Delivered in presence of

JESSIE LESIIT

JUDGE