

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL APPEAL NO.392 OF 2002

(From original conviction and sentence of the SRM's court at Migori in criminal case

No.456 of 2002)

**DOMINIC ODHIAMBO OMWA APPELLANT
VERSUS
REPUBLIC RESPONDENT
JUDGMENT:**

The State Counsel says that the appellant's mens rea to the offence charged against him was not proved. Accordingly we hold that all the ingredients of the offence were not proved as required by the law. So we quash conviction and set aside the sentence. But since the appellant was proved to have viciously attacked the complainant and inflicted injuries on him we convict him of the offence of assault causing bodily harm c/s 251 of the Penal Code and sentence him to 12 months imprisonment to be served from 11/12/2002.

Dated and delivered on the 12/8/2003.

**I.C.C. WAMBILYANGAH
JUDGE
P.K.K.A. BIRECH
COMMISSIONER OF ASSIZE**