

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
CRIMINAL APPEAL NO. 69 OF 2003

JANE WANJIKU MWANGI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Appeal from a judgment of the Resident Magistrate's Court
at Kigumo, L. N yambura, Resident Magistrate, dated 24 th
February, 2003 in Criminal Case No. 777 of 2002)

JUDGMENT

The Appellant, **JANE WANJIKU MWANGI**, was convicted of the offence of grievous harm contrary to Section 234 of the Penal Code alleged to have been committed on 10th August, 2002 at Kungumaitu Village in Maragua District against Catherine Njeri Maina.

It is apparent from the record in this case that the police never cared to carry out any investigation in this matter apart from receiving a report about the state of the Complainant, looking for her relatives to inform them, participate in arresting the Appellant and charging her.

As a result the court has evidence of a single identifying witness in the name of the Complainant in the face of four witnesses on the part of the Appellant all contending that the Appellant could not have been the person who assaulted the Complainant because the Appellant had visited Kiambu although she was found at home at 8.00 p.m.

Further, the position of P3 is not clear. Who issued it? Who had it? Who produced it?

Thirdly while the offence is alleged to have been committed at Kungumaitu Village, there is no evidence about what happened at Kungumaitu Village and the evidence on record therefore does not support the charge.

In addition, there was poor recording of evidence by the learned trial magistrate who could not even care to record the capacity in which that person, Julius Njuguna Chege P.W.3, from Muranga District Hospital was giving evidence. Was he giving evidence in his capacity as a record clerk from that hospital? Was that the reason why the P3 form had to be produced by the court instead of that witness?

The case was simple but the handling by the prosecution was careless and by the trial court poorly handled. It is sad that this is a case in which the Complainant was so badly injured and impaired and there was reason for the prosecution and the trial court to do a better job to ensure there are no loopholes for an appeal to succeed. They did not care to do that.

In the circumstances, the Appellant's appeal is hereby allowed, her conviction quashed and the sentence set aside. The Appellant be set at liberty forthwith unless lawfully detained in some other cause.

Dated this 26th day of November, 2003.

J. M. KHAMONI

JUDGE