



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

HC. CR. APP. NO. 5 OF 2002

*(From original conviction and sentence in Criminal Case  
No.404 of 2001 in the Chief Magistrate's Court at Nyeri  
by W. K. Korir – R. M.)*

PATRICK MURIUKI MATHAI.....APPELLANT

VERSUS

REPUBLIC .....RESPONDENT

J U D G M E N T

Patrick Muriuki Mathai (hereinafter referred to as the Appellant) was tried and convicted by the Resident Magistrate Nyeri of the offence of causing Grievous Harm Contrary to Section 234 of the Penal Code. He was sentenced to serve five years imprisonment. He has now appealed against his conviction and sentence contending that the trial Magistrate erred in rejecting his defence of insanity.

The facts of the case were that the Appellant for no apparent reason attacked the complainant Peter Kamau Mathai who is his step brother and cut him on the head with an axe seriously injuring the Complainant. This was testified to by both the complainant and P. W. 2 George Mwangi Gicheru who was present during the attack. The Appellant did not cross – examine any of the five prosecution witnesses who testified but maintained in his defence that He could not tell whether He committed the offence or not as He had been unwell for the last fifteen years. His sister D. W. 2 Rose Ngima who testified in support of this defence claimed that the Appellant had been suffering from depression for a period of about thirteen years. The trial Magistrate rejected the defence of insanity and found the Appellant guilty.

Learned State Counsel Mr. Obuo does not support the conviction first because the prosecution was conducted by an incompetent prosecutor, and secondly because the defence of insanity was not appropriately dealt with. Mr. Obuo has urged this court to order a retrial.

It is clear from the proceedings that the prosecution of this case was carried out by one Sergeant Kigera who was not a competent prosecutor. The proceedings were therefore a nullity and on this ground alone the conviction cannot stand.

In considering whether a retrial should be ordered or not the court ought to consider whether the evidence available against the Appellant is *prima facie strong evidence* (See *Ruhi vs Republic* [1985] KLR 373) . In this case the evidence against the Appellant was overwhelming. The offence involved is also a very serious offence. In the circumstances of this case justice demands that a retrial be ordered.

I do therefore allow this appeal quash the conviction and set aside the sentence and order that the Appellant shall be produced before the Chief Magistrate Nyeri for retrial before any court of competent jurisdiction.

Orders accordingly.

*Dated, Signed and Delivered this 23 rd day of December 2003.*

H. M. OKWENGU

JUDGE