

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

HIGH COURT CRIMINAL APPEAL NO. 362 OF 2000

(APPEAL FROM JUDGMENT OF B. G. MAINA, DISTRICT

MAGISTRATE GICHUGU IN CR. CASE NO. 594 OF 2000)

PATRICK KINYUA KAGO APPELLANT
VERSUS
REPUBLIC RESPONDENT

J U D G M E N T

Patrick Kinyua Kago (hereinafter referred to as the Appellant) was tried and convicted with 4 other persons for the offence of Assault causing actual bodily harm contrary to section 251 of the Penal Code. The Appellant was sentenced to 9 months imprisonment whilst his co-Accused were each sentenced to 2 months imprisonment. The Appellant has now appealed against his conviction and sentence. Learned state counsel Mr. Obuo has conceded the appeal and in my view rightly so as the Appellant's conviction which was based on identification was not safe as the identifying witnesses did not give any description nor explain how they identified the Appellant or his colleagues. There was further no identification parade to support the witnesses evidence.

Further the P3 form was irregularly produced by the arresting officer.

I do therefore allow this appeal and set aside the conviction and sentence. The Appellant having already served sentence, no further orders will be made.

Dated signed and delivered this 17th day of December 2003.

H. M. OKWENGU
JUDGE