

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

CRIMINAL APPEAL NO. 219 OF 2002

RAPHAEL KIBUI WANYOIKE.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Appeal from a judgment of the District Magistrate's

Court at Kigumo, P. Mwangulu, District Magistrate,

dated 20 th November, 2001, in

Criminal Case No. 1215 of 2001)

JUDGMENT

The Appellant was charged with the offence alleging grievous harm contrary to Section 234 of the Penal Code it being alleged that on 28th day of September, 2001 at Mutoho Village, Maragwa District the Appellant unlawfully did grievous harm to the Complainant **JOHN WANYOIKE KAMANDE**.

Although this was a case involving members of one family living as neighbours only two witnesses gave evidence on each side from that family. On the side of the Complainant therefore the other witnesses were the arresting police officer and the clinical officer. On the side of the Appellant there were no other witnesses. Police investigation could have revealed that these relatives live in family feud and could have taken to the court a better case. But, as it is apparent, no real police investigation was done in this matter where the Complainant, alleging to have been at home with his brother, both go outside their house at midnight to answer a call of nature. The Complainant is assaulted and seriously injured outside there and subsequently, talks no more about his brother. Instead he talks about his parents and only other people for subsequent help.

The Complainant's brother whom the Complainant claimed was outside when the Complainant was assaulted, comes up to tell the court he had returned to his house but at the same time purports to give some details of the movement of the assailant as if the Complainant's brother was outside seeing what was happening yet he continues to inform the court that he remained in the house and slept as if nothing had happened to the Complainant outside.

In his defence the Appellant claims he was the one who was attacked at his home and describes what happened there alleging the Complainant and other four people invaded him there and a struggle ensued. That being the position, who actually went to attack the other?

In short I find that this was a case not only poorly investigated and prosecuted by the prosecution but also poorly recorded by the learned trial magistrate making it difficult for people, other than him, reading that record later to understand what he was recording.

In the circumstances, the prosecution's case was not proved beyond reasonable doubt and there should have been no conviction of the Appellant. Otherwise, that conviction was unsafe.

Accordingly, I allow this appeal, quash the conviction of the Appellant and set aside the sentence.

The Appellant be set at liberty forthwith unless lawfully detained in some other cause.

Dated this 11th day of December, 2003.

J. M. KHAMONI

JUDGE