

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

HIGH COURT CRIMINAL APPEAL NO. 48 OF 2002

(ORG RM'S KRT CR. C. 329/01

PATRICK MURAGE NGURU APPELLANT

VERSUS

REPUBLIC RESPONDENT

JUDGMENT

The appellant **PATRICK MURAGE NGURU** was convicted by the Senior Resident Magistrate Karatina of the offence of grievous harm contrary to section 234 of the Penal Code. He was sentenced to serve 2 years imprisonment and to receive 3 strokes of the cane. This appeal is against both conviction and sentence.

The appellant and the complainant are brothers and apparently the incident was triggered by a dispute over land. The petition of the appeal consists 6 grounds. Counsel for the appellant indicated that he was arguing all the grounds together.

Counsel submitted that the appellant acted in self defence as the complainant (PW2) was allegedly the aggressor who attacked the appellant. Counsel complained that the police failed to issue the appellant with a P3 form which could have confirmed that the appellant sustained injuries in the fight with PW2. The appeal was opposed by the Provincial State Counsel who agreed that the conviction of the appellant was proper and urged the court to enhance the sentence imposed on the appellant.

I have reconsidered the evidence rendered at the trial of the appellant. PW2 indicated that he had no panga at the time of the incident. On his part the appellant contended that PW3 had a panga which he used to cut him on the head. The appellant's son Martin Wanjohi Murage (PW1) however testified that when he went to the scene of the incident he saw only one panga. The Clinical Officer (PW1) testified that the injuries sustained by PW2 could not have been caused by a fall on pruned tea plants.

There was no evidence led to prove that the appellant sustained any injuries. There was nothing to prevent him from getting a medical report from the medical officer who treated him. He did not apply for witness summons to issue to the said medical officer to testify in court and confirm the alleged injuries.

A P3 Form is not the only format that is crucial to confirm injuries sustained. From any event there was no evidence that the appellant even reported to any police station in post regarding the alleged attack on him by PW2. The mere fact that APC Stephen Njeru (DW2) said blood on the appellant's clothes is no confirmation that the appellant sustained any injuries.

I find that the appellant was considered properly as the evidence against him was overwhelming. The learned trial magistrate rightly concluded that the appellant was in no real threat to his life on himself in order that he should inflict such savage panga flows on PW2. The appellant in my view should count himself lucky that he was not charged with the offence of attempted murder. I don't see any merit in this appeal. I dismiss it in its entirety.

Dated this 10th day of April 2002.

J.K. MITEY

JUDGE