

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

HIGH COURT CRIMINAL APPEAL NO. 231 OF 2002

(ORG PM'S KRG CR. C. 257/02)

JULIUS MURIUKI NDIGOYA APPELLANT

VERSUS

REPUBLIC RESPONDENT

JUDGMENT

The appellant JULIUS MURIUKI NDIGUYA was convicted by the principal magistrate Kerugoya on 2 charges:-

1. Apart causing actual bodily harm c/s 251 of the Penal Code.
2. Malicious damage to property c/s 339 (1) of the Penal Code.

On the first count he was sentenced to serve twelve (12) months

imprisonment and on the second Count he was sentenced to serve six (6) months imprisonment. The sentences are to run consecutively.

I have perused the proceedings recorded in the lower court. I found that the injuries sustained by the complainant (PW 1) were not conclusively and satisfactorily proved. Apart from stating that the appellant hit him on the head and chest PW 1 did not indicate the injuries he sustained and whether the same were visible to the naked eye. The medical officer who filed the P3 form did not testify as a prosecution witness. The P3 form was produced by P.C. Paul Muthunia (PW4) of Kerugoya Police Station. No basis was laid for the production of that document by PW 4. He was not then It was not indicated that he could interpret the observations noted in the P3 form. He simply produced the document. The production was irregular. The contents of the P3 form became hearsay and were admissible in evidence. Consequently the charge under S. 251 of the Penal Code was not proved. I quash the conviction thereon and set aside the sentence.

As regards the second count there is ample evidence that the appellant tore the complainant's shirt. The evidence of PW1, PW2 and PW3 was consistent and cogent. The appellant was properly convicted. The trial magistrate rightly rejected the appellants defence in that count. The appellant's appeal is dismissed in respect to count 2.

On the appeal against sentence, I note that the appellant is on record as a first offender. I allow the appeal against sentence. I set aside the sentence imposed and in its place order that the appellant pays a fine of Kshs.5000/- in default he will serve four (4) months imprisonment.

Dated this 27th day of June 2002.

J.K. MITEY

JUDGE