

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

APPELLATE SIDE

CRIMINAL APPEAL NO. 266 OF 2002

**(from Original Conviction and Sentence in Criminal Case No. 811 of 2002
of the Chief Magistrate's Court at Mombasa – A.W. Ngugi – R.M.)**

JULIUS MASOBO APPELLANT

- VERSUS -

REPUBLIC RESPONDENT

J U D G E M E N T

The appellant was charged and convicted for the offence of Grievous harm contrary to Section 234 of the Penal Code and sentenced to serve 4 years imprisonment. He has filed the appeal on 6 grounds which he consolidated in his submissions.

The brief facts of the case are that on 28.2.02 at around 4.00 p.m. PW1, Mary wambui met her neighbours the Appellant who was in the company of one JAMALI who were carrying a Video Cassette. She asked to borrow the same and appellant promised to give it to her later. According to PW1, the appellant and Jamali then went away and left her talking to a friend only or them to return and Julius insulted her calling her a prostitute. He then descended on her with kicks and blows and as a result she suffered injuries to her stomach and left shoulder. She went to the hospital and reported to the police station and was issued with a P3 form which the doctor completed and described her injuries as maim.

PW3, Dr. Lawrence Ngona the medical officer who had completed the P3 form said he had examined her on 22/3/02 and noted the injuries were about 24 days old.

This was a case of the evidence of the victim versus that of the accused as no other witnesses testified although the victim says she was in the company of another lady and the accused was in the Company of one JAMALI. The Appellant's grounds of appeal are that the evidence adduced was not sufficient to warrant a conviction as no motive or plausible reason was given for the attack which he denied. No prior grudge was either alleged. He also further says crucial witnesses were not called. It is for the prosecution to chose which witnesses to call but in a case which appears to have some grey areas as in this one, it is important that eyes witnesses who are acknowledged to have been present be called in order to ensure that justice is seen as done. Apart from the evidence of the PW1, there is no other evidence to connect the appellant with the incident.

PW1, knows the appellant well, she was his neighbour and it has not been alleged that he had run away, yet it took a month to have him arrested. No explanation was offered for this long delay. The State supported both the conviction and sentence.

I have read and evaluated the evidence on record as I am bound to. There is no doubt in my mind that PW1, suffered injuries but there was no sufficient evidence adduced to show that the Appellant was the perpetrator of the crime beyond any reasonable doubt. In the circumstances, I quash the conviction and set the sentence aside. The appellant is to be set free forthwith unless held for any other lawful reasons.

Dated and Delivered at Mombasa this 22nd day of November, 2002.

P.M. TUTUI

COMMISSIONER OF ASSIZE