

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

APPELLATE SIDE

CRIMINAL APPEAL NO. 333 OF 2001

**(From Original Conviction and Sentence in Criminal Case No. 558 of 2001
of the Chief Magistrate's court at Mombasa – A.W. Ngugi – R.M.**

JOHNSON ABOK OLUM APPELLANT

- VERSUS -

REPUBLIC RESPONDENT

J U D G E M E N T

The appellant was charged and convicted for the offence of Causing Grievous Harm Contrary to Section 234 of the Penal Code and was sentenced to serve 4 years imprisonment. He has preferred an appeal against conviction and sentence.

The facts of the case as I understand them from the trial court record are that the complainant PW1, JEDIDAH NDANO had gone to the appellant's place of business to collect her son's clothes which the appellant, a tailor, was stitching. In the process, an argument started as they disagreed on the materials. From the evidence, Appellant took the clothes or materials from the complainant PW1, but she too followed and snatched them back. A sort of tag of war scenario was created and the appellant held PW1's hand in an effort to restrain her from taking the clothes. It was while this was happening that PW1 dislocated her ankle. The doctor's report on the P3 described the injury as a dislocation but he had to use screws to fasten it. In his appeal, the appellant challenged the evidence by the doctor on the P3 Forms saying it was contradictory. I have looked at the same and find no discrepancy. The State Counsel supported the conviction but said sentence was harsh. I have read the record as I am bound to and I agree with the State Counsel that there is no doubt PW1 got injured while she struggled with Appellant. However have the ingredient of Section 234 of the Penal Code been fulfilled?

Section 234 Reads:

“Any person who unlawfully does grievous harm to another is guilty of a felony and is liable to imprisonment for life or without corporal punishment”

From the evidence it is clear there was a struggle between the two resulting from a disagreement at that moment on clothes. In the process of the struggle PW1's ankle suffered a dislocation. PW1, confirmed there was no grudge between them and confirms the struggle. Both aggravated the situation by continuing to try and wrestle the clothes from each other's grip. It is in the light of these facts that I am bound to agree with the State Counsel that the sentence was harsh in the circumstances. However, I find the conviction was proper and considering all the facts reduce the sentence to one (1) year imprisonment. And since the appellant has already served more than that sentence, he shall be set free forthwith unless held for any other lawful reasons.

Dated and Delivered at Mombasa this 7th day of November, 2002.

P.M. TUTUI

COMMISSIONER OF ASSIZE