

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA**

AT MACHAKOS

CRIMINAL APPEAL NO. 121 OF 1998

**(From Original Conviction and Sentence in Criminal Case No. 73 of
1998 of the Senior Resident Magistrate's Court at Kangundo: C. D.
Nyamweya Esq.)**

BENEDICT MAKENZI MUTUILU :::::::::::::::::::::::::::::: APPELLANT

VERSUS

REPUBLIC :: RESPONDENT

**Coram: J. W. Mwera J.
Appellant in person
Orinda State Counsel for Respondent
C.C. Muli**

J U D G E M E N T

The appellant was charged under S. 95 (1)(b) Penal Code in that on 25.1.98 at Kisukioni market Matungulu Machakos he created a disturbance in a manner likely to cause a breach of the peace by threatening to stab one Herman Kisisi with a knife.

After hearing five (5) prosecution witnesses plus the appellant and his one witness, the court found him guilty and sentenced him to 2 months imprisonment. He had an appeal filed for him by a lawyer which he argued in person on basis that witnesses gave contradictory evidence as to the time over which the offence was committed or just the time itself plus what the revellers were discussing. That the defence evidence was not properly appreciated to bring out a claim that it was the complainant (P.W.1) who got hold of the appellant's shirt and this provoked or was responsible for what transpired. And that this defence was rejected without reason. Further that the judgement was not dated at delivery and that the sentence was harsh in the circumstances. The appellant submitted that all were drunk by the time of the alleged offence at a bar.

The Learned State Counsel supported the conviction and saw the sentence as lenient. The appellant told the court that he served it and only got bond 10 days before the end.

From the evidence of the complainant (P.W.1) and those who were there in the bar at Kisiukoni market, where all this took place, the appellant came there and accused P.W.1, a headmaster of a local secondary school of some impropriety behaviour concerning school funds. That he threatened to beat him up (P.W.1) and even stab him with a knife. That he held and pushed P.W.1 about until other patrons fell in between to separate the two. Apparently the appellant, P.W.1 and those other patrons are local people, known to each other and interacting in local and school matters one way or the other. On his part the appellant alleged that it was the complainant who assaulted him.

From the evidence of direct witnesses, the Learned Trial Magistrate rightly concluded that the appellant behaved in a manner likely cause a breach of the peace. His conduct at the bar in question, against P.W.1 points to that.

The appeal on conviction is dismissed. As for the sentence it was lawful, even lenient. But this court orders that the part the appellant had served suffices.

Save for the variation of the sentence as to end as far as it had been served this appeal is dismissed. The appellant a local stock trader should behave better in future.

Judgement accordingly.

Delivered on 31st July 2001.

J. W. MWERA

JUDGE