



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**(CORAM: CHERERE -J)**

**CRIMINAL APPEAL NO. NO. 136 OF 2017**

**BETWEEN**

**LINUS MITHIKA MWILARIA.....APPELLANT**

**AND**

**REPUBLIC.....RESPONDENT**

**(Appeal against judgment and sentence in Meru Chief Magistrate's Court**

**Criminal Case No2 of 2017 by Hon. S. Abuya (SPM) on 31<sup>st</sup> October, 2017)**

**JUDGMENT**

**The Trial**

1. Accused was charged and convicted in two counts. In the 1<sup>st</sup> count of interfering with free political campaigning contrary to section 13 (f) (ii) of the Election Offences Act No. 37 of 2016, he was fined Kshs. 50,000/- and in default 3 years' imprisonment. In the second count of causing grievous harm contrary to section 234 of the Penal Code, he was fined Kshs. 50,000/- and in default 10 years' imprisonment.

**The prosecution's case**

2. The prosecution case as narrated by the complainant **Evans Muteithia Murithi** and **PW6 Kenneth Kirima Mutuma** was that on 09.07.2017, they were on a campaign trail on lower Tigania area with Hon. Kiraitu Murungi and others when they encountered supporters of another candidate who shouted at them. It was their evidence that when they approached Appellant who was one of the persons shouting, Appellant armed himself with a rungu and hit the complainant on the right hand fracturing it. They confirmed that the meetings went on untroubled and that they did not identify the people that were throwing stones at their convoy. **PW2 IP Henry Kaberia** and **PW3 PC Samuel Irungu** who were at the scene of the alleged crimes did not identify the persons that shouted and threw stones during the political meeting because they were many nor witness the complainant being attacked. It was their evidence that Appellant was subsequently arrested in M/V KAC 863 Y whose occupants had earlier in the day been shouting during Kiraitu Murungi's meeting. **PW4 Dr. Wambugu** confirmed that complainant suffered a fracture on his right hand and assessed the degree of injury as grievous harm.

**Defence case**

3. In his sworn defence, Appellant conceded that he passed by Kagaene market where Hon. Kiraitu Murungi was holding a political meeting but denies shouting or being in company of people that shouted or threw stones at the meeting or injuring the complainant. Pineus Mwendi Murungi stated that on the material date, he was travelling in Appellant's vehicle with the Appellant. He conceded that a political meeting organized by Hon. Kiraitu Murungi was going on when they passed by Kagaene market. He denied that they shouted or threw stones at the meeting. He similarly denied that Appellant had injured the complainant.

4. The trial court after considering the case rejected the defence found the Appellant guilty, fined him Kshs. 50,000/- and in default 3 years' imprisonment in the 1<sup>st</sup> count and Kshs. 50,000/- and in default 10 years' imprisonment in the 2<sup>nd</sup> count.

**The Appeal**

5. Appellant challenges the conviction and sentence on the grounds among others that:

**1) The prosecution case was not proved**

**2) The defence was not considered**

6. When the appeal came up for hearing on 12.07.2021, the court directed that the appeal be argued by way of written submissions which both parties dutifully filed.

**Analysis and Determination**

7. On first appeal from a conviction by a judge or magistrate, the appellant is entitled to have the appellate court's own consideration and view of the evidence as a whole and its own decision thereon. The court has a duty to rehear the case and reconsider the material before the judge or magistrate with such materials as it may have decided to admit. **(See the Court of Appeal decision in Kariuki Karanja Vs Republic [1986] KLR 190).**

8. I have considered the appeal in the light of the evidence on record, the grounds of appeal and submissions for the Appellant and for the State.

9. Whilst there is evidence that there were shouts and throwing of stones by supporters of a different candidate other than the one that PW1 and PW2 were supporting, these two witnesses together with police officers PW3 and PW4 conceded that the campaigns went on undisturbed.

10. The finding by the trial court that the offence of interference with free political campaigning had been proved was therefore against the weight of evidence.

11. Concerning the 2<sup>nd</sup> count, Appellant conceded that he passed by Kagaene Market where the offence was allegedly committed. The incident happened in broad day light. He was positively identified as the one that caused grievous harm to the complainant by hitting him with a rungu. The evidence by complainant and his witness was well corroborated and does not appear to have been influenced by the fact that they were in different political camps with the complainant. I therefore find that the verdict of guilt on the 2<sup>nd</sup> count was well founded.

12. From the foregoing analysis, I allow the appeal on the first count and confirm the sentence on the 2<sup>nd</sup> count. It is ordered that the KShs. 50,000/- paid by the Appellant as fine in respect of the 1<sup>st</sup> count be refunded to him.

**DELIVERED AT MERU THIS 04<sup>TH</sup> DAY OF OCTOBER 2021**

**T. W. CHERERE**

**JUDGE**

In the presence of-

**Court Assistant - Kinoti**

**Appellant - Absent**

**For Appellant - Mrs. Mwanzia for Muia Mwanzia & Co. Advocates**

**For the State - Ms. Mwaniki**