



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

CRIMINAL APPEAL NO.E004 OF 2020

EZEKIEL AMBUCHI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

[1] The appellant, Ezekiel Ambuchi, was charged before the Resident Magistrate at Busia with the offence of grievous harm, contrary to s.234 of the **Penal Code**, in that, on the 14th October 2017 at Amagoro township Teso North unlawfully did grievous harm to Benjamin Murunga.

[2] After a full trial, the appellant was convicted and sentenced to serve ten (10) years imprisonment, but being aggrieved with the conviction and sentence he preferred the present appeal on the basis of the grounds set out in his petition of appeal, dated 16th September 2021.

[3] At the hearing of the appeal, the appellant appeared in person and relied on his written submissions in support of the appeal.

The respondent opposed the appeal through the learned prosecution counsel, **Mr. Mayaba**, on the basis of the grounds contained in his written submissions.

[4] Upon due consideration of the supporting grounds and the rival submissions, the duty cast upon this court was to reconsider the evidence and draw its own conclusions bearing in mind that the trial court had the benefit of seeing and hearing the witness.

[5] In that regard, the prosecution case was briefly that on the material date at about 4.00p.m, **Elizabeth Atyang (PW 1)** returned to her home and found her son Benjamin Murunga (**complainant (PW 2)**) being assaulted by the appellant. She screamed for help. Her neighbours and others arrived at the scene and began beating the appellant before he was rescued by two people. Her son suffered serious injuries and was rushed to hospital.

[6] A medical examination carried out on the complainant by a clinical officer, **Pauline Sireti, (PW 5)**, revealed that he suffered grievous harm as a result of the assault. This was documented in the necessary medical examination report (**P3 form (P Ex 2)**).

David Simiyu (PW 3) assisted the injured complainant and ensured that he was taken to hospital.

P.C Lawrence Kumbo (PW 4) of Malaba police station investigated the case and arrested the appellant who was eventually charged with the present offence.

[7] The appellant's defence was a denial and a contention that he merely scared away the complainant and another boy after finding his food contaminated with cow dung. The boys ran towards the nearby road and he returned to his house to prepare fresh food only to be confronted by a mob of people who set upon him and beat him up. He maintained that he did not assault the complainant but was told that he fell down and injured himself. He implied that his differences with the mother of the complainant caused his arrest and arraignment in court.

[8] All the foregoing evidence was considered by the trial court which then arrived at the conclusion that the prosecution case was proved beyond reasonable doubt against the appellant who was accordingly convicted and sentenced to ten (10) years imprisonment even though the offence carried a maximum sentence of life imprisonment.

[9] A re-evaluation of the evidence by this court left no doubt that the appellant was properly and lawfully convicted.

There was no particular dispute that the complainant (**PW 2**) was actually assaulted and occasioned grievous harm by the appellant. He (**complainant**) confirmed as much and was supported in that regard by the evidence of his mother (**PW 1**) and that of the clinical officer (**PW 5**).

[10] The combined evidence of the complainant, his mother and the clinical officer was sufficient and credible enough in establishing that the complainant suffered grievous harm after being assaulted by the appellant and not on account of the accident of falling down as alleged by the appellant. Clearly, the defence raised by the appellant was shattered and disproved by the prosecution evidence against him. His conviction by the trial court was therefore sound and proper.

[11] The sentence meted out against the appellant was lawful and reasonable regard being given to the fact that the appellant was a first offender but the circumstances of the case prevailed upon the trial court to impose a short and sharp sentence instead of life imprisonment with a view to deter the appellant and others from engaging in such criminal acts going forward.

[12] It would therefore follow that all the appellant's grounds of appeal are unsustainable. The record of the trial court did not support his claim that his mitigation was disregarded nor did it support the allegation that the trial court grossly violated his Constitutional right.

In sum, this appeal is devoid of merit and is hereby dismissed in its entirety with a rider .that the period served in remand by the appellant be taken into consideration computation of the ten years imprisonment sentence.

J.R. KARANJAH

J U D G E

[DELIVERED & SIGNED THIS 11TH DAY OF NOVEMBER 2021]