



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KIAMBU

CORAM: D. S. MAJANJA J.

CRIMINAL APPEAL NO. 116 OF 2017

BETWEEN

JOSEPH WAINAINA KARANJA APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal against the original conviction and sentence dated 19th September 2017 in Criminal Case No. 1050 of 2014 at Gatundu Magistrates Court before Hon.L.Wachira, SPM)

JUDGMENT

1. The appellant, **JOSEPH WAINAINA KARANJA**, was charged and convicted of the offence causing grievous harm contrary to **section 234** of the *Penal Code (Chapter 63 of the Laws of Kenya)*. He was fined Kshs. 50,000/- in default to serve 1-year imprisonment. The particulars of the charge were that on 28th June 2014 at Kigaa Village in Gatundu South Sub-County within Kiambu County, the appellant did grievous harm to **JANE NJERI KARANJA**.

2. The facts giving rise to the case were as follows. On 28th June 2014 at about 12.30pm, the complainant, PW 1, told the court that she was resting outside the house when the appellant came and started making noise claiming that she had taken over their mother's role and prevented him from bringing posts into the house. As they argued, the appellant picked a stick and hit her left lower arm as she tried to shield her head. She sustained a fracture as a result. The appellant continued to beat her while uttering threats until she managed to escape. She reported the matter to Kigongo Police Station. She was referred to Gitare Dispensary for first aid then to Gatundu Hospital for further treatment.

3. She was issued with a P3 medical form which was filled by Dr. Mugweru. However, it was produced by Dr. Teddy Irungu (PW 2). According to the report, PW 1 sustained a fracture of the left forearm, that is the ulna and radius. She had bruises around the neck, her right middle finger and lower limbs had injuries. He assessed the degree of injury as grievous harm.

4. The investigating officer, PC Philip Simatwa (PW 3) told the court that PW 1 reported the incident of assault on 28th June 2014 at about 1.00pm. He issued the P3 medical form and after recording her statement commenced investigations. He told the court that the appellant went in to hiding as they looked for him where he was living in the same compound as PW 1. The appellant was arrested on 24th September 2014.

5. In his sworn defence, the appellant stated that the complainant, PW 1, was his sister and on the material day, he went home and found PW 1 had denied his sister, Margaret Nduta Karanja, DW 2, access to their mother's house where PW 1 was residing. He confronted her over the issue and she started making noise. He tried to move away but she held him by the collar. She injured him on the nose until he started bleeding. As he turned away, she held his private parts but he pushed her away causing her to fall and injure herself. He then left for Nairobi and was subsequently arrested.

6. DW 2 confirmed that she was not present when the incident took place. She testified that she informed the appellant that PW 1 had stopped her workers from storing timber in the house. She told the court that PW 1 was troublesome and had been involved in many incidents of violence. Lawrence Gatuku Karanja, DW 3, also told the court that he did not witness the incident. He testified that PW 1 had left her husband and went to live at home where she had been violent and confrontational.

7. The thrust of the appellant's case is that the prosecution did not prove its case. I have reviewed the evidence I have outlined above as required by the first appellate court alongside the submissions of counsel and I take the following view of the matter. It is common ground that the appellant and PW 1 were involved in a long running family dispute and that on the material day there was an argument between both

of them. The appellant's case is that he did not assault PW 1 as she was the aggressor. He only pushed her and she fell. This is a case where only two people present testified and the court may draw from circumstantial evidence in determining who was telling the truth.

8. PW 1 suffered serious injuries. Such injuries could not have been caused by a fall. PW 1 sought treatment immediately after the incident although the P3 form was filled much later. From the P3 medical form PW 1 sustained bruises around the neck. This is unlikely to be the result from a mere fall. The nature of the injuries show that the trauma was forceful as to cause fractures. The doctor also recorded that PW 1 had a human bite which is inconsistent with a mere fall.

9. Counsel for the appellant challenged the P3 medical form as it was produced by another doctor other than the one who examined the appellant. **Section 77** of the *Evidence Act (Chapter 80 of the Laws of Kenya)* was complied with as the doctor who knew the examining doctor testified. The Court of Appeal in *Stephen Mutuku Makau and Another v Republic* [2017] eKLR explained this provision as follows:

Although generally expert documents should be produced by their makers, Section 77 of the Evidence Act allows any other person to adduce an expert document such as medical, analyst, document examiner's and geologist reports so long as the authenticity of the documents is not disputed. The Section provides as follows;

77 (1) In criminal proceedings any document purporting to be a report under the hand of a government analyst, medical practitioner or of any ballistics expert, document examiner or geologist upon any person, matter or thing submitted to him for examination or analysis may be used in evidence.

(2) The court may presume that the signature to any such document is genuine and that the person signing it held the office and qualifications which he professed to hold at the time when he signed it.

(3) When any report is so used the court may, if it thinks fit, summon the analyst, ballistics expert, document examiner, medical practitioner, or geologist, as the case may be, and examine him as to the subject matter thereof.

10. I also find that the fracture of the ulnar and radius bones taken together with all the other injuries amounted to grievous harm as defined under **section 4** of the *Penal Code* as follows;

“grievous harm” means any harm which amounts to a maim or dangerous harm, or seriously or permanently injures health, or which is likely so to injure health, or which extends to permanent disfigurement, or to any permanent or serious injury to any external or internal organ, membrane or sense.

11. The appellant's conduct was inconsistent with his innocence. After PW 1 sustained serious injuries after the assault, he disappeared from the locality. If the matter was as innocent as he suggests, why would he go into hiding even when he heard that the matter had been reported to the police only for him to be arrested on 24th September 2014.

12. The appellant's witnesses confirmed that there was a land dispute and alleged that PW 1 was a violent person. The fact that there is a dispute did not give the appellant licence to inflict grievous harm on PW 1. I therefore find that the offence was duly proved.

13. The maximum sentence for causing grievous harm is life imprisonment as intent to cause grievous harm is a precursor to murder. In this case the sentence imposed was very lenient and since the State did not give notice to enhance it, I affirm the sentence.

14. The appeal is dismissed.

DATED and DELIVERED at KIAMBU this 8th day of JANUARY 2020.

D.S. MAJANJA

JUDGE

Mr Gachoka instructed by Gachoka Mwangi and Company Advocates for the appellant.

Mr Kasyoka, Prosecution Counsel, instructed by the Director of Public Prosecutions for the respondent.