REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CRIMINAL APPEAL NO. 126 OF 2016

(From Original Conviction and Sentence in Criminal Case No. 3024 of 2014 by the Chief Magistrate's Court at Kakamega)

SIMON SHIRAMBA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGEMENT

1. The appellant was convicted by Hon J Ong'ondo, Senior Resident Magistrate, of causing grievous harm contrary to section 234 of the Penal Code Cap 63 Laws of Kenya, and was accordingly sentenced to six (6) years imprisonment. The particulars of the charge that faced the appellant were that on the 7th day of September 2014 at Elukho Village, Shikoti Location, Kakamega Central District of Kakamega County, he unlawfully did maim Ayubu Anyangu.

2. The appellant pleaded not guilty to the charges before the trial court, and the primary court conducted a full trial. The prosecution called four (4) witnesses.

3. Ayub Anyangu, the complainant, testified as PW1. he gave sworn testimony. he identified the appellant as the person who attacked him with a panga on 7th September 2014 at 11.00 am at the home of Rose Josphat. He testified that he was hit on the head twice with the weapon. He lost consciousness and came to in hospital. He described the appellant as a neighbour to whom his uncle had sold land. PW2, James Akhonya, said he was from Kakamega County Referral Hospital. He was the one who prepared the P3 form produced in evidence. He said that he did not treat PW1, but he prepared the P3 form from treatment notes and examination. He described his injuries as two long cuts on the neck caused with a sharp weapon. The cuts were treated by stitching. He described the degree of harm as maim. Rose Ogolla (PW3) was the neighbour of PW1 who said that she saw the appellant attack him with a panga, during cross-examination she said that she was not present during the attack but was told about it by Teresa. PC Bor (PW4) was, the investigation officer.

4. The appellant was put on his defence. He gave a sworn statement and called one witnesses. He said that on the 7th September 2014 he was at the scene where he found PW1 taking away his Napier grass which he had cut without his consent. He followed him from behind. He tripped and fell, the panga he was allegedly carrying cut him on the head. He denied cutting him. He called Alex Maroni Yeswa, who testified as DW 2. He was not at the scene on 7th September 2014, and did not know what transpired on that day.

5. After reviewing the evidence, the trial court convicted the appellant of the charge he faced, and sentenced him as stated in paragraph 1 of this judgement.

6. Being dissatisfied with the conviction and sentence, the appellant appealed to this court. His appeal is on sentence only. He pleads that the sentence is harsh, the court did not consider the circumstances prevailing at the time, it did not consider alternative non-custodial sentences nor his mitigation, nor the fact that he was a first offender.

7. The appeal was canvassed on 7th March, 2019. The appellant relied on written submissions that he placed before me, while Mr. Ng'etich, Senior Prosecution Counsel, made oral submissions. The appellant's written submissions dwelt mainly on the sentence, and aspects of it were in mitigation. Mr. Ng'etich submitted that the prosecution had proved all the elements of the offence of the offence charged, despite the fact that the appeal was not on conviction but sentence.

8. The offence charged attracts a maximum penalty of life in prison. The victim suffered two long cuts. I am persuaded that the sentence imposed fitted the crime. I note, however, that the appellant was a first offender. Even though he did not express remorse at the trial, he has expressed remorse on appeal and prayed for lenience. He was sentenced on 22nd December 2016. I have considered his plea. I believe that he has learnt his lesson and paid for his wrongdoing. I shall accordingly reduce his sentence to the time served. He shall accordingly be released from prison custody unless he is otherwise lawfully held.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 14th DAY OF June 2019

W MUSYOKA

JUDGE