



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CORAM: D. S. MAJANJA J.

CRIMINAL APPEAL NO. 97 OF 2018

BETWEEN

JACKSON MUSILA MUSONYE.....APPELLANT

AND

REPUBLIC.....RESPONDENT

(Being an appeal from the original conviction and sentence by Hon. E. Malesi, SRM dated 6th July 2018 in Kakamega Magistrates Court Criminal Case No. 3214 of 2017)

JUDGMENT

1. The appellant, **JACKSON MUSILA MUSONYE**, was charged, convicted and sentenced to 30 years' imprisonment for the offence of causing grievous harm contrary to **section 234** of the *Penal Code (Chapter 63 of the Laws of Kenya)*. The particulars of the charge against him was as follows:

On the 24th day of October 2017 at Khwisero village, Shibuye sub location in Kakamega East District within Kakamega County, he unlawfully did grievous harm to Wycliffe Shitemi Amwoga.

2. Before the trial court, the complainant, Wycliffe Shitemi Amwoga (PW 1), testified that on 24th October 2017 at around 2.30pm, he saw the appellant suddenly appear on the road with a panga and raised it to cut him. In order to shield himself, he also raised the hand but the appellant cut him and severed the hand. The appellant further cut him on the left leg. He raised alarm but lost consciousness and found himself in hospital on the next day.

3. James Mboya Musonye (PW 2) recalled seeing PW 1 and the appellant along the road as he was walking home. When he saw the appellant trying to cut PW 1 with the panga, he tried to ward him but the appellant cut PW 1 arm and fled the scene. He immediately went to hospital and called the police who took PW 1 to hospital.

4. The Clinical Officer, Peter Ayoyi (PW 3), examined PW 1 on 17th March 2013. He confirmed that PW 1's left hand had been amputated. He also had several cuts on the head and legs.

5. The Investigating Officer, PC Kennedy Selete (PW 4) confirmed that the incident was reported but the victim was in a bad condition before his statement could be taken. He further testified that the appellant had fled the area but was later arrested.

6. In his sworn defence, the accused denied the offence and stated that he was framed as a result of a land dispute. He recalled that on the material day, while at home relaxing, he heard screams from outside. He went and found a crowd and heard that someone had been injured but he had been taken to the hospital. He told the court that PW 2 accused him of being involved in the incident but he denied. He stated that his family was threatened and as a result he was forced to flee the area after being attacked.

7. Although the appellant's petition of appeal raised contested the sentence, the appellant's written submissions contended that the offence against him was not proved.

8. I have considered the entire evidence and I find that PW 1, PW 2 and the appellant were known to each other. The incident took place in broad daylight and there was nothing in the evidence to suggest that this was a case of mistaken identity. The appellant's defence that he was framed is dismissed in light of the direct and clear evidence of PW 1 and PW 2. Moreover, that there was a land dispute of itself does not absolve the appellant as the evidence pointing to his complicity is clear. I therefore affirm the conviction.

9. As regards the sentence, I have considered the same as the order to maintain consistency in sentences passed in similar cases and taking into account the sentence imposed for the offence of robbery with violence and similar offences, I reduce the same to fifteen (15) years imprisonment.

10. I affirm the conviction and allow the appeal only to the extent that the sentence of thirty (30) years imprisonment is quashed and substituted with a sentence of **fifteen (15) years imprisonment**.

DATED and DELIVERED at KAKAMEGA this 2nd day of September 2019.

D. S. MAJANJA

JUDGE

Appellant in person.

Ms Ombega, Prosecution Counsel, instructed by the Director of Public Prosecutions for the respondent.