



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KAKAMEGA**

**CORAM: D. S. MAJANJA J.**

**CRIMINAL APPEAL NO. 31 OF 2018**

**BETWEEN**

**SAID OBULIMIA ANGULU.....APPELLANT**

**AND**

**REPUBLIC.....RESPONDENT**

*(Being an appeal from the original conviction and sentence by Hon. M.I. Shimenga*

*RM dated 5<sup>th</sup> day of March, 2018 in Butere Magistrates Court Criminal Case No. 92 of 2017)*

**JUDGMENT**

1. The appellant, **SAID OBULIMAI ANGULU**, was charged and convicted of assault causing actual bodily harm contrary to **section 251** of the *Penal Code (Chapter 63 of the Laws of Kenya)*. It was alleged that on 7<sup>th</sup> March 2017 at Emusunguri village, Shiraha Sub Location within Butere Sub County of Kakamega County, he unlawfully assaulted Abdallah Hamisi thereby causing him actual bodily harm.
2. The appellant was sentenced to 4 years' imprisonment and now appeals against the conviction and sentence. He complained that the evidence against him was by members of the same family and accordingly fabricated. He also contended that his defence was not considered.
3. The prosecution called the complainant, Abdallah Hamisi (PW 1), Saumu Nanduku (PW 2) and Aisha Akinyi (PW 3). They all testified that they were at home at about 9.00pm on the 7<sup>th</sup> March 2017. PW 2 was studying while PW 1 was listening to the radio under the light of an oil lamp. The appellant, who is a brother to PW 1, barged into the room with a panga and rungu and cut PW 1's left hand had hit him with the rungu. PW 2 and PW 3 ran out of the house screaming. The alarm caused neighbours to come and rescue PW 1. They took him to hospital.
4. Cedrick Wangura (PW4), a clinical officer, attended to PW 1 on that night at about 11.30 p.m. He recorded that PW 1 had a blood stained T shirt and he had injuries on the head and left hand. He stitched the head and left thumb and assessed the degree of injury as harm.
5. The investigating officer, Corporal Barnaba Koech (PW 5) confirmed receiving a report of the incident on the material night. He testified that from his investigations the appellant and PW 1 had a long standing land dispute.
6. In his sworn defence, the appellant (DW 1) denied the offence. He stated that on the material evening, he found the brother's cows feeding on his maize as PW 1 stood armed with a rungu. He stated that PW 1 hit him and he became unconscious. His wife, Martha Awinja (DW 2) testified that she saw PW 1 beat the appellant whereupon he was taken to hospital.
7. I have reviewed the evidence on record and in as much as the incident took place at night in circumstances that call for caution in assessing it, this is a case of recognition and not identification by strangers. The appellant was known to PW 1, PW 2 and PW 3. They all saw him clearly as he barged into the confined space of their house which was lit by an oil lamp.
8. I agree with counsel for the respondent that the testimony of PW 1, PW 2 and PW 3 ought not to be disregarded merely because the witnesses were relatives or that PW 1 and the appellant had a land dispute. Their evidence was clear and consistent and the injuries corroborated by the report of medical treatment. The appellant's defence, on the other hand, was rightly dismissed. He did not report the assault to the police nor produce evidence of treatment from any hospital on the material night. He also did not raise the issue of his assault

by PW 1 with the investigating office in cross-examination. I therefore affirm the conviction.

9. As regards the sentence, the appellant complains that it is harsh. Under **section 251** of the **Penal Code**, the maximum sentence is 5 years' imprisonment. The trial court took into account the sentiments of the Probation Officer in the pre bail's report which showed that the appellant was violent and was indeed facing similar charges. I have no reason to depart from these findings. The sentence is affirmed.

10. The appeal is dismissed.

**DATED and DELIVERED at KAKAMEGA this 3<sup>rd</sup> day of September 2019.**

**D.S. MAJANJA**

**JUDGE**

Appellant in Person

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