



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
CRIMINAL APPEAL NO.143 OF 2014

STANLEY MICHUBU ISAACK APPELLANT

VERSUS

REPUBLIC RESPONDENT

(From the original conviction and sentence in Criminal Case No.3099 of 2011 of the Chief Magistrate's Court at Maua by Hon. C. Maundu – Senior Principal Magistrate)

JUDGMENT

The appellant, **STANLEY MICHUBU ISAACK**, was charged with an offence of grievous harm contrary to section 234 of the Penal Code. The particulars of the offence were that on the 14th September 2011 at Antubeiga sub location in Igembe District within Meru County, the appellant unlawfully did grievous harm to Henry Kaberia Kanake.

The appellant was found guilty of the offence and sentenced to serve 10 years imprisonment. He now appeals against both conviction and sentence.

The appellant was represented by Mr. Kimathi Kiara, the learned counsel.

The grounds of appeal were as follows:

1. That the learned magistrate erred in law and in fact in convicting the appellant on insufficient and contradictory evidence.
2. That the learned magistrate erred in law and in fact in failing to believe the evidence of the appellant.

The state opposed the appeal through Mrs. Matheka, the learned counsel.

Briefly the facts of this case are that while the complainant was going home from guarding his sister's miraa (khat), he met the appellant who told him that he was going to kill him after they had exchanged greetings. The appellant pulled out a slasher and cut him severally.

The appellant contended that he was framed up in this offence.

This is a first appellate court. As expected, I have analyzed and evaluated afresh all the evidence adduced before the lower court and have drawn my own conclusions while bearing in mind that I neither saw nor heard any of the witnesses. I will be guided by the celebrated case of **OKENO VRS. REPUBLIC 1972**

EA 32.

The complainant testified that at about 8pm while he was going home, he met the appellant who is his nephew. He greeted him and the latter responded. After the exchange of greetings, the appellant told him that he was going to kill him. This is when he cut him severally. The evidence of **David Njaga (PW1)** confirmed that the complainant received serious injuries that he classified as maim. It was contended for the appellant that failure to call other witnesses by the prosecution amounted to the word of the complainant against that of the appellant. This was insufficient evidence it was argued.

I have carefully perused the evidence on record. There is no evidence that there was a material witness whom the prosecution failed to call. The complainant's evidence suggest they were just the two of them at the scene when the offence took place. I therefore find that there was sufficient evidence for the trial court to found a conviction on. It follows therefore that the learned trial magistrate was justified in rejecting the defence of the appellant.

The upshot of this analysis of evidence is that the appeal must fail and the appellant to serve the sentence meted out by the trial court.

DATED at Meru this 11th day of May 2016

KIARIE WAWERU KIARIE

JUDGE