

REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
CRIMINAL APPEAL NO.77 OF 2013

(Originating from conviction by Hon. D. M. Ireri in Lamu Cr. No.457 of 2012)

MOHAMED SAID OMAR APPELLANT

VRS

REPUBLIC RESPONDENT

JUDGMENT

The appellant was charged with the offence of grievous harm contrary to section 234 of the Penal Code. The particulars of the offence are that the appellant, on the 20/10/2012 at Boraiman area in Lamu County unlawfully did grievous harm to Joseph Njuguna Wangoi.

The trial court found the appellant guilty as charged and sentenced him to serve fifteen (15) years imprisonment. The grounds of appeal are that the sentence is excessive. The case was a fabrication, the prosecution did not discharge its burden of proof and that his defence was not considered. The appellant filed written submissions. I have read the handwritten submissions and the appellant confirms that he committed the offence only that he is remorseful. He entirely relied on the written submissions. He contends that the complainant was his friend and satan confused him. He is now a changed man and would like to be given another chance. He even worked with the two took alcohol together.

Mr. Nyongesa, prosecuting counsel opposed the appeal. Counsel maintains that the appellant attacked the complainant with a panga. The two had a disagreement after working together. The appellant attacked the complainant even after he had fallen down and the injuries were serious.

The record of the trial court shows that Joseph Njuguna was the complainant. He testified that on 20/10/2012 they worked together with the appellant at someone's shop and they were given ksh.1000/= to share. The appellant gave him his share of ksh.500. The two went to take local brew and in the process disagreed. The appellant hit him with a piece of wood. He went away and came back at about 6.30 p.m. The appellant hit him again twice at the back even as he had fallen on the ground. He was taken to Lamu District Hospital where he was admitted for four days.

PW2 Francis Baya Thoya testified that on 20/10/2012 at about 6.30 p.m he was heading home when he saw the complainant running while the appellant was pursuing him armed with two pieces of wood and a panga. PW1 fell down and the appellant attacked him. They managed to arrest the appellant and took him to Mokowe Police Station. PW3, James Jeffer was with PW2 and they managed to arrest the appellant.

PW4 Corporal David Makali was based at the Mokowe Police Post. A report was made on 20/10/2012 at 8.30 p.m. The appellant was taken to the station and he re-arrested him. He investigated the case and charged the appellant with the offence. PW5, Joseph Kanyi Nderitu is a clinical officer. He attended to the complainant. PW1 had two deep cut wounds that caused a fracture of the right clavicle. He filled the P3 form for PW1.

In his sworn defence, the appellant testified that on 20/10/2012 he met five people on the road. He knew one of them. He ran to Mokowe Police Post and he was arrested. He denied committing the offence.

The main issue for determination is whether the prosecution proved its case as required by the law. It is

clear from the evidence that PW1 sustained injuries and was hospitalized for four (4) days. The incident occurred in day broad light. PW2 and PW3 saw the appellant attacking PW1. They managed to arrest the appellant and took him to Mokowe Police Post. In his written submissions, the appellant admits committing the offence.

From the evidence on record, I do find that the prosecution proved its case as required. PW1 knew the appellant and they had worked together the same day. PW1 knew who had attacked him. I find that the defence does not raise any doubt on the prosecution case. The appeal on conviction is hereby disallowed.

With regard to sentence, I do find that the sentence is quite excessive. Although the injuries are severe, fifteen (15) years is quite a long period. The parties herein were friends and used to work together. I do set aside the fifteen (15) years sentence and replace it with three (3) years imprisonment. The appellant to serve three (3) years imprisonment from the date of conviction.

Dated, signed and delivered at Malindi this 4th day of June, 2015.

SAID J. CHITEMBWE

JUDGE