



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
MILIMANI LAW COURTS
CRIMINAL APPEAL NO 351 OF 1987
KANYI..... APPELLANTS
VERSUS
REPUBLIC..... RESPONDENT
JUDGMENT

August 19, 1987 **Scholfield J** delivered the following Judgment.

Wariuki Kariu appeals against his conviction by a learned district magistrate II, Kiambu on a charge of assault causing actual bodily harm and against sentence of nine months' imprisonment imposed upon him on that conviction.

The prosecution evidence is that Muchai Gitau (PW 1) was driving a motor lorry from Rabai to Tinganga when he met a matatu driven in the opposite direction. Because there was a pothole on his side of the road Muchai stopped his vehicle. The appellant, who was the conductor of the matatu, came out of the vehicle with a simi, aimed to cut Muchai's head but Muchai put his hands up toward off the blow and his left hand was cut. That cut required stitching.

Muchai did not know the appellant but took the number of the matatu and the appellant was later arrested.

Muchai's evidence was supported by a passenger of his PW 2, David Nganga Gakure. Both witnesses identified the appellant in an identification parade conducted by PW 5 inspector John Mwangi.

The appellant, unsworn, told the court that he was driving the matatu. He almost had a head on collision with the matatu. They pushed the matatu (presumably it had stopped) and The driver of the vehicle behind the matatu parked where the lorry had stopped. The appellant left for Nairobi and was arrested two weeks later.

The appellant called William Thomas Njoroge a passenger in the matatu as his witness. He said the matatu landed in a ditch and they all alighted and a fight erupted between he passengers and the lorry driver.

The evidence of two prosecution witnesses was positive without appearing to be rehearsed. The incident occurred during day light hours and they clearly identified the appellant as being from the matatu. There was a third witness to the identification parade who failed to identify the appellant and he was not called

as a witness. That must be taken into account against the prosecution.

The appellant would have the court believe that he did not involve himself in any arguments with the complainant but that is clearly not the case. When one (missing word) considers his witness's evidence.

Clearly the complainant was cut by someone during the argument over the driving of the lorry and from my independent assessment of the evidence in its totality I am satisfied it was the appellant who inflicted the injury. I am satisfied it was the appellant who inflicted the injury. I believe the two prosecution witnesses and disbelieve the appellant and his witness.

In the circumstances where a weapon was used and a nasty cut inflicted a sentence of nine months' imprisonment is not inappropriate.

The appeal is dismissed.

August 19, 1987

SCHOLFIELD

JUDGE