



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MACHAKOS**

**CRIMINAL APPEAL NO 181 OF 1986**

**MUTHIKE..... APPELLANTS**

**VERSUS**

**REPUBLIC..... RESPONDENT**

**JUDGMENT**

August 10, 1987 **Torgbor J** delivered the following Judgment.

The appellant was charged and convicted on two counts of assault and sentenced to consecutive sentence of 12 months imprisonment on each count plus 2 strokes of the cane.

In this appeal he complains that he did not plead guilty and that in effect his case had not been properly considered by the trial court. The two complainants in the two counts were PW 1 Kenneth Nduba Ndolo and PW 2 Sammy Nthenge. PW 1's case is that on January 11, 1986 at 5.30 pm he was assaulted by appellant who chased him with a knife with which the appellant eventually struck the complainants head causing injury and for which injury the complainant was treated at hospital. The story of PW 2 was that at the material time aforesaid he saw the appellant holding a knife and chasing people with it, and that his left hand fingers were cut with that knife by the appellant.

The evidence of the 1st complainant is amply corroborated by PW 6 and PW 7 and by the doctor (PW 8) who filled the P 3 forms for the complainant. There are noticeable discrepancies in the names of the complainants appearing in the charge sheet in the record of the evidence. I am satisfied however that the discrepancies were typographical and not vital errors such as would affect conviction.

The evidence of PW 2 is not as specifically supported by other evidence as that of PW 1 and I warn myself of the danger of accepting his evidence. In this case I am satisfied that the evidence of PW 2 is acceptable considered in relation to the evidence of PW 1, PW 6, PW 7 and the doctor, and may be acted upon.

The appellant's case is that he was at home when the certain people came and provoked him. The manner of the provocation is not clear. He said the 1st complainant was hit by his (appellant's child during a scuffle and denied assaulting the 2nd complainant.

The trial magistrate did not believe the appellants evidence and neither do I. The second witness for the appellant was his wife and her evidence exonerating the appellant is to be considered with that relationship in mind. Moreover her evidence as to the cause of the injury to the complainants (ie hit by a stone) was inconsistent with that of the appellant himself. She also said the 2nd complainant was injured by a wire fixed to a pole.

I am satisfied that the evidence that the convictions were proper and are upheld.

But sentences were excessive and are set aside and substituted by a term of imprisonment for 6 months in respect of each count to run concurrently and 2 strokes of the cane in respect of each count.

**August 10, 1987**

**TORGBOR**

**JUDGE**