



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MACHAKOS**

**CRIMINAL APPEAL NO 40 OF 1987**

**NZOKA..... APPELLANTS**

**VERSUS**

**REPUBLIC..... RESPONDENT**

**JUDGMENT**

The appellant was convicted for causing grievous harm to his wife by setting her on fire. He was sentenced to 6 years imprisonment plus 10 strokes of the cane.

The whole case turns on credibility of the witness. The complainant's case is that her husband set her ablaze. No one saw the incident. The two other material witnesses for the prosecution were PW 3 and PW 4 who were called to the scene by the appellant herself. Their evidence did not in any way incriminate the appellant.

The appellant's own case is that the complainant set herself ablaze. His sole witness D W 1 who came to the scene, said the appellant arrived on the scene from the shamba from where he has been plucking maize. It was D W 1 who put out the fire by pouring water on the complainant. The complainant's parents were present and according to this witness the complainant told her mother she had burnt herself with a stove.

This is a difficult case. The various witnesses for both the prosecution and the defence gave different times when the incident occurred. The evidence of PW 3 and PW 4 do not in any material way support the complainant's story whereas the evidence of DW 1 exculpates the appellant. There is serious doubt in my mind therefore as to where the truth lies the benefit of which I would give to the appellant. I do not consider the evidence of the complainant by itself as sufficient for convicting the appellant bearing in mind the fact of their relationship and the steps taken by the appellant to inform their relative about the incident and taking her to hospital.

In my view the conviction is not safe and it is therefore quashed and the sentence is set aside.

Appeal is allowed.

**August 4, 1987**

**TORGBOR**

**JUDGE**