

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
MILIMANI LAW COURTS

CRIMINAL APPEAL NO 283 OF 1987

NGANGA..... APPELLANTS

VERSUS

REPUBLIC..... RESPONDENT

JUDGMENT

September 1, 1987 Rauf J delivered the following Judgment.

The appellant was convicted of assault contrary to section 251 of the Penal Code and sentenced to 18 month's imprisonment on March 5, 1987. The incident took place on July 3, 1985 and it took over 18 months to complete the case.

Mr Muchui relies on 6 grounds of appeal which are mainly based on evidence. As regards the magistrate's lack of finding on the issue of the appellant's credibility, I have noticed that she did fully consider the defence before convicting him which shows that she rejected the defence contention. The time factor has also no effect on the consideration of the evidence as a whole. Having gone through the records, I find that there is no substantial reason to upset the magistrate's decision convicting the appellant. I dismiss the appeal against conviction.

The appeal against sentence should be considered in the face of mitigating factors namely, the appellant's belief, right or wrong, that the boys were stealing his sugarcane when it is realized that the parties were unknown to each other prior to this incident. Besides, the appellant was first offender. I think the sentence was excessively harsh. I, therefore, reduce it to 9 month's imprisonment, thus allowing the appeal to that extent.

September 1, 1987

RAUF

JUDGE