

REPUBLIC OF KENYA

IN THE COURT OF APPEAL OF KENYA

AT KISUMU

(CORAM: NYARANGI, GACHUHI & PLATT JJA:

CRIMINAL APPEAL NO 25 OF 1987

NYABIND s/o OJAL.....APPELLANT

V

REPUBLIC.....RESPONDENT

JUDGMENT

In this appeal Mr Nyamori for the appellant very properly has urged every possible point in favour of the appellant . However, Yuanita PW 3 and Rose PW 5 saw the appellant running away form the scene where the deceased collapsed after he was fatally injured. The two who knew the appellant well did corroborate the deceased's dying declaration that the appellant hit him at the stomach with a stick because they saw the appellant running away with a stick and also saw a swelling on the stomach. The incident took place during broad daylight.

The judge considered all the evidence including the testimony of the provincial Psychiatrist. The surgeon who operated the deceased ought to have given evidence as to the injuries on the deceased. The failure to call the surgeon is not in this case fatal because the actual wound could be seen and matches the evidence of the postmortem examination. The Minister concerned should be moved to act under subsection (6) of section 166 of the Criminal Procedure Code. In the result, the appeal is dismissed.

Those are the orders of the court.

June 17, 1987

NYARANGI, PLATT & GACHUHI JJA