



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (MILIMANI LAW COURTS)**  
**CRIMINAL APPEAL 94 OF 1984**

**MWANGI CHEGE .....APPELLANT (Original Accused I)**

**v e r s u s**

**REPUBLIC .....RESPONDENT**

**CONSOLIDATED WITH**

**CRIMINAL APPEAL 94 OF 1984**

**(From original conviction and sentence in Criminal Case 13268 of 1983 of the Resident Magistrate' Court at Makadara, R M Njiru Esq)**

**THIONGO MWANGI .....APPELLANT (Original Accused2)**

**v e r s u s**

**REPUBLIC .....RESPONDENT**

**CONSOLIDATED WITH CRIMINAL APPEAL 95 OF 1984 (From original conviction and sentence in Criminal Case 13268 of 1983 of the Resident Magistrate's Court at Makadara, R M Njiru Esq)**

**KATHERINE WAMBOI ..... APPELLANT Original Accused 3)**

**V e r s u s**

**REPUBLIC .....RESPONDENT**

**CORAM SACHDEVA J**

**P S Gatimu for appellants**

**E K Muttu (Principal State Counsel) for Respondent.**

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## J U D G E M E N T

I have consolidated these three appeals.

All the three appellants had been jointly charged before the learned Ag. Resident Magistrate at Makadara, with Assault causing actual bodily harm contrary to section 251 of the Penal Code. They were convicted after trial and each was fined Shs.1,000 in default, to serve four months in prison.

Through their advocate, Mr P S Gatimu, they are appealing both against conviction and sentence. Their short identical petitions of appeal are in the following terms –

1. The learned magistrate erred in convicting the appellants on the basis of the evidence adduced.
2. The conviction was against the weight of evidence.
3. The sentence was ‘excessive’ having regard to the nature of the case.

The third ground, is obviously directed against sentence. The first and the second grounds do not make me any wiser as to what is claimed to be wrong in the convictions.

Attention of Mr Gatimu is drawn to *Muchoki Irima v R* [1977] Kenya L R 164 and various authorities cited therein, as to what the contents of petitions of appeal should be. I quote a short passage from pages 165 and 166:

“In *Mutemba s/o Rutehende v R* [1953] 20 E A C A 276, the Court of Appeal for East Africa ruled that, a petition of appeal should bear an intelligent relation to the facts as revealed by the evidence and should not degenerate into a stereo-typed form. In *Riano s/o Lenalaiman v R* [1968] E A 968, the Court of Appeal held that, it is not sufficient ground of appeal to allege that a conviction was bad in law, or that a conviction was against the weight of evidence, and where an appellant is represented by counsel, he will not be allowed to argue any point under a general ground of appeal.”

However, when the hearing of these appeals commenced, Mr Gatimu abandoned the appeals of the 1st appellant, Mwangi Chege, and the 2nd appellant, Thiongo, which are hereby dismissed. Mr Muttu, Principal State Counsel for the Republic, conceded the appeal of the 3rd appellant, Katherine Wamboi, as there is not evidence implicating her with the commission of the offence. Accordingly, the appeal of Katherine Wamboi is allowed, conviction quashed and sentence set aside. If she has paid any fine, it must be refunded to her.

Dated at Nairobi and delivered this 9th day of May, 1984.

S K SACHDEVA

JUDGE