



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

crim app 685 of 83

CAROLINE MUNYA ADINDA APPELLANT

(Original accused No 1)

VERSUS

REPUBLIC RESPONDENT

CONSOLIDATED WITH

CRIMINAL APPEAL NO 686 OF 1983

(From Original convictions and sentences in Criminal Case No 2770 of 1983 of the 2nd Class District Magistrate’s Court at Makadara).

MARGARET MWIKALI MATINGI APPELLANT

(Original accused No 2)

VERSUS

REPUBLIC RESPONDENT

CORAM ALUOCH MRS AG J

Mr Nzioka for appellants

Mr Mbai (Sate Counsel) for respondent

JUDGMENT

The learned 2nd class magistrate sitting at Makadara of the offence of assault, contrary to Section 251 of the Penal Code (Cap 63) on the first count, and malicious damage to property, contrary to Section 339(1) of the Penal Code (Cap 63), convicted the two appellants whose appeals have been consolidated. Consequently the two were sentenced as follows, the first appellant was sentenced to four months’ imprisonment on first count, and fined Kshs 500 in default, two months’ imprisonment on the second count. The second appellant was fined Kshs 500 on each count, or in default, three months’ imprisonment on each count.

The two have appealed against sentence only.

Briefly, the facts were that on January 31, 1983 about 9 am the two appellants stormed into a class-room at Kinsworth Primary School, where the complainant was teaching.

The two were led by a little girl, a daughter of the first appellant who had on the previous day, been sent home by the complainant for allegedly stealing another pupil's book.

The second appellant started shouting at the teacher. PW 2 another teacher, heard the shouts and came into this classroom, but was prevented by the second appellant from reaching the complainant. The first appellant picked a ruler and hit the complainant on the hand, and thereafter beat her many times.

The pupils ran out screaming. The second appellant lifted a chair to hit the complainant, but stopped.

The second appellant pushed the complainant to the back of the classroom, still beating her. They tore her dress in the process, and she sustained several cuts all over.

PW 2 too was not able to reach the complainant and assist her, because the appellants blocked her way. Finally PW 4 a male teacher managed to stop the fight, and administered first aid on the complainant, as she was bleeding. PW 5 arrested both appellants and finally, the complainant's injuries were confirmed by PW 2 the examining Doctor. The two were later charged with this offence. Mr Nzioka for both appellants submitted in mitigation that the two were first offenders, that at the time of the offence, the first appellant was pregnant, and in fact gave birth to a baby that same night, and besides that she has one other young child to look after, plus a jobless husband. The second appellant on the other hand, he submitted, took a minimal role in the whole transaction. However, the learned trial magistrate's finding was: "It is my conviction that the two had gone into the class-room having had a common intention which they intended to execute. Accused 1 who was heavy had enlisted the help of accused 2 to help her carry out a mission.

They bursted into the class to execute that mission ..."

The learned trial magistrate further, after convicting the two, and before sentence had this to say:

"The circumstances of this case were very serious. A parent busted into a class-room and in front of the children, assaulted the teacher. As a parent she should have refrained from such an action for I don't see how parents would expect teachers to be able to teach and discipline students if they themselves go and assault them in class. That the first accused was pregnant is no excuse for her acts which should be condemned. Though she is a first offender, a custodial sentence is appropriate, to serve as an example to potential would be parents who might think of assaulting those teaching their children ..."

I have on my own independent assessment of facts, considered all the circumstances of this case, more particularly, the fact that the two appellants beat up and tore a teacher's dress in front of the pupils she was teaching, and thus sent the pupils out of the classroom screaming. The humiliation the teacher suffered besides the physical injuries she sustained cannot be under estimated. The appellants act must therefore be condemned in the strongest terms possible, as there must have existed at that school some laid down procedures or regulations of dealing with complaints such as the one the appellants had.

Under these circumstances therefore, a custodial sentence of four months' imprisonment plus a fine of Kshs 500 on count two, in respect of the first appellant, plus a total fine of Kshs 1,000 on the second appellant on both counts, cannot be said to be manifestly excessive, however, in view of the fact that the first appellant was at such an advanced stage of pregnancy which could have made her as "highly charged" as she was, and caused her to act on the spur of the moment, without due consideration, and the second appellant on the other hand might have just sympathized with her friend, the first appellant and foolishly agreed to join her in beating up the teacher.

I substitute a fine of Kshs 1,000 in default, four months' imprisonment in respect of the first appellant on the first count, her appeal against sentence is allowed only to that extent. Her appeal on the second count is dismissed, and in respect of the second appellant her appeal against sentence is dismissed in its entirety.

The fine of Kshs 1,000 to be paid out of Kshs 5,000 held by court as cash bail, the balance to be refunded to the depositor.

Dated, signed and delivered at Nairobi this 28th day of June, 1983.

J ALUOCH (MRS)

AG JUDGE