



REPUBLIC OF KENYA
IN THE COURT OF APPEAL

AT NAKURU

crim app 50 of 84

RICHARD C BIEGONAPPELLANT

AND

REPUBLIC RESPONDENT

(Appeal from judgment of the High Court of Kenya at Nakuru (Mr Justice J R O Masime) dated 29th February 1984 in High Court Criminal Appeal No. 590 of 1981

JUDGMENT OF THE COURT

The appellant was convicted by a District Magistrate at Sotik on May 1983, of an unlawful assault causing actual bodily harm, contrary to Section 251 of the Penal Code.

He was sentenced to 3 years imprisonment and 14 strokes corporal punishment by the Resident Magistrate, Kericho on June 2 1983.

He appealed from the conviction and the sentence on June 13 1983, and his appeal was summarily rejected by the High Court Judge at Nakuru, on February 29 1984. A possible delay of 8 months seems over lengthy.

The grounds of his appeal, from the subordinate court(s) to the High Court, was that, his trial was a nullity since he pleaded not guilty to this charge but the first magistrate entered a plea of guilty to the charge and then transferred the case to the Resident Magistrate for sentence.

This is, in effect, his only ground in his appeal to this court, filed in this registry on March 27 1984 and his supplementary grounds produced today. Yet, the record of the District Magistrate reveals that, the appellant unequivocally pleaded guilty to the charge and its particulars when it was read out and explained to him, and again, when the prosecutor had outlined the facts which amounted to that charge and its particulars. He did not regret it before the Resident Magistrate. We are satisfied he pleaded guilty unequivocally to the charge.

The maximum sentence for the offence of an assault causing actual bodily harm contrary to Section 251 of the Penal code in May 1983, was five years with or without corporal punishment.

The District Magistrate was empowered, at the time, to sentence the appellant to only 12 months imprisonment, a fine not exceeding Shs.5,000/- and six strokes corporal punishment. He believed these punishments would not be appropriate to the appellant.

The appellant had stabbed Job Busieni on the forehead with a knife and the latter's injuries were treated at Kapsabet hospital and classified as 'harm'. The assault was apparently engendered by the appellant being checked by Job Busieni, for choosing a record in a juke box which he wished to hear, when Job Busieni had pressed his shilling into the machine, and when he was about to select the one he wished to hear.

Why did the District Magistrate not sentence him but send him to the Resident Magistrate to do so instead? It was because the appellant had 9 previous convictions between December 22 1970, and May 31 1983, of which 6 were relevant. His character and antecedents warranted it, Section 221 Criminal Procedure Code.

Today, he has not persuaded this court that, the learned Judge was anything but right to reject his appeal summarily so we now dismiss his second appeal.

Dated and delivered at Nakuru, this 24th day of September, 1984.

A A KNELLER

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JUDGE OF APPEAL

Z R CHESONI

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AG JUDGE OF APPEAL

J O NYARANGI

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AG JUDGE OF APPEAL

I certify that this is a true copy of the original.

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DEPUTY REGISTRAR