

REPUBLIC OF KENYA

**IN THE COURT OF APPEAL
AT MOMBASA**

(CORAM: TUNOI, SHAH & KEIWUA, J.J.A.)

CRIMINAL APPEAL NO. 71 OF 2001

BETWEEN

**KASUNA ISWII APPELLANT
AND
REPUBLIC RESPONDENT**

**(Appeal from a conviction and judgment of the High Court
of Kenya at Mombasa (Hon. Tutui, Commissioner of
Assize) dated 23rd March, 2000**

**in
H.C.CR.APP. NO. 378 OF 1999)

JUDGMENT OF THE COURT

The appellant **KASUNA ISWII** was after trial convicted on two counts of grievous harm contrary to section 234 of the Penal Code and sentenced to seven years imprisonment on each count, the sentences to be served concurrently. His first appeal to the High Court of Kenya at Mombasa was dismissed. The convictions and the sentences were upheld. He now appeals to this Court and we remind ourselves that on this second appeal, we are precluded from questioning the findings of fact of the two lower courts, provided that there is evidence to support those findings: **R v Hassan bin Said 9 E.A.C.A. 62.**

Thus the only question to be decided in this appeal is whether there are errors of law in the judgments of the lower courts to warrant interference by this Court.

The evidence on record establishes beyond all reasonable doubt that the appellant viciously stabbed the complainants, PW1 and PW2, with a sharp knife. The attack was unprovoked. The plea of self defence canvassed by the appellant was correctly rejected by the courts below.

In our view the appellant was convicted on sound evidence and his appeal to this Court has no merit. The appeal is accordingly dismissed.

Dated and delivered at Mombasa this 14th day of January, 2002.

**P. K. TUNOI
JUDGE OF APPEAL
A. B. SHAH
JUDGE OF APPEAL
M. Ole KEIWUA
JUDGE OF APPEAL**

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

DEPUTY REGISTRAR

