



**IN THE COURT OF APPEAL
AT NAIROBI
(CORAM: GICHERU, LAKHA & KEIWUA, J.J.A.)
CRIMINAL APPEAL NO. 129 OF 2001**

BETWEEN

ANTONY CHEGE KIBATHI APPELLANT

AND

REPUBLIC RESPONDENT

**(Appeal from a Judgment of the High Court of Kenya at Nairobi
(Justice Etyang) dated 31st August, 2001**

in

H.C.CR.A. NO. 889 OF 2001)

JUDGMENT OF THE COURT

ANTHONY CHEGE KIBATHI, the appellant in this appeal; was convicted by the Resident Magistrate Shem Kebong'o sitting at Gatundu of the offence of grievous harm contrary to Section **234 of the Penal Code** and was sentenced to serve three years' imprisonment. His appeal against this conviction and sentence to the superior court resulted in that conviction being quashed and substituted by a conviction for the offence of assault causing actual bodily harm contrary to **section 251 of the Penal Code**. The sentence was also set aside and substituted with one of eighteen months' imprisonment from the date of his conviction. He has now appealed to this Court against that decision.

The main ground of objection raised on his behalf in this appeal was that if the evidence in the case was properly assessed, there was no evidence at all to support the conviction. In support of this view, it was submitted, that the charge had not been proved beyond reasonable doubt and that on first appeal, the superior court itself felt so doubtful that it quashed the conviction of the offence with which the appellant was convicted.

As regards this ground which we agree raised a matter of law properly for decision by this Court, namely, in the submission that the finding in fact has no evidence to support it, we have come to the conclusion that there is evidence on record capable of being taken into consideration to sustain the charge.

There was overwhelming evidence of P.W.1., P.W.4 and P.W.5. who testified that upon their arrival at the scene, they found the appellant armed with a metal bar and still hitting the complainant.

We certainly cannot hold that there was no evidence of this fact and that being so, we must dismiss this appeal and it is dismissed accordingly.

Dated and delivered at Nairobi this 7th day of December, 2001.

J.E. GICHERU

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JUDGE OF APPEAL

A.A. LAKHA

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JUDGE OF APPEAL

M. KEIWUA

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR