



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT HOMA BAY

CRIMINAL APPEAL NO.12 OF 2020

YUSUF AZIZ ORIMBO.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal from original conviction and sentence in Criminal case No.808 of 2018 of the Principal Magistrate's Court at Oyugis dated 27/2/2020 – Hon. C.A.Okore, SRM)

JUDGMENT

1. **Yusuf Aziz Orimbo**, (appellant) was convicted and sentenced to **three(3) years** imprisonment by the Senior Resident Magistrate at Oyugis for the offence of **grievous harm**, contrary to **Section 234** of the **Penal Code**. It was alleged that he unlawfully caused grievous harm to Samuel Omollo Obora, on the 28th day of October 2018, at North Karachuonyo location, Rachuonyo South – Homa Bay County.

2. Being aggrieved by the conviction and sentence, the appellant preferred the present appeal on the basis of the grounds set out in the petition of appeal dated 13th March 2020, filed herein on his behalf by **Achillah T. O & Co Advocates**.

Grounds one(1) to five(5) are a challenge to the conviction while ground six(6) is a challenge to the sentence.

The appellant therefore prayed for the appeal to be allowed by this court to the extent of quashing the conviction and setting aside of the sentence.

3. The hearing of the appeal proceeded by way of written submissions. Both parties filed their respective submissions which were given due consideration by this court whose duty was to reconsider the evidence adduced at the trial and draw its own conclusions bearing in mind that the trial court had the advantage of seeing and hearing the witnesses (**see, Okeno Vs Republic[1972]EA 32**).

4. The appeal was opposed by the respondent, and this court having considered the evidence adduced against the appellant though the complainant **Samuel Omollo Obora(PW1)**, the complainants brother, **Daniel Ondiek Obura(PW2)**, the complainant's neighbor, **Odhiambo Abdul Abdi(PW3)**, the clinical Officer, **Willis Omondi(PW4)** and the investigations Officer, **PC Steven Omweswa(PW5)**, is satisfied that the complainant was indeed assaulted and seriously injured on the material date.

5. In his defence, the appellant denied that he was the assailant and implied that he was not at the scene when the incident occurred. He also implied that he was implicated due to a land dispute between him and the complainant. He said that his son, **Ben Odinda(DW2)**, was grazing cattle on the disputed land when he was chased away by the complainant. That, he(appellant) heard the

son scream and on checking saw the complainant running away.

6. The appellant further implied that the complainant suffered injury due to his habit of drinking alcohol and smoking “bhang”(cannabis sativa/marijuana).

The appellant’s son (**PW2**) indicated that the complainant is always, disorderly while drunk and did threaten him on the material date while armed with a panga (machete) and rungu (wooden club) such that when he (**DW2**) screamed while calling out for his father, he (complainant) ran away and fell into a hole.

7. The appellant’s son thus implied that the complainant suffered injury as a result of falling into the hole.

However, all that was stated by the appellant and his son suggesting that the complainant was not assaulted and injured by the appellant was disapproved and discredited by the complainant’s evidence duly corroborated by that of the complainant’s brother(**PW2**) and the complainant’s neighbor(**PW3**). These two witnesses clearly placed the appellant at the scene of the offence at the material time. They also confirmed that the appellant was the actual assailant.

8. The evidence by the Clinical Officer(**PW5**) confirmed that the complainant suffered grievous bodily harm after being assaulted by the appellant. Indeed, the prosecution evidence against the appellant was cogent and credible in proving that it was him and nobody else who assaulted and occasioned grievous harm to the complainant. The trial court found the evidence to be credible and sufficient and relied on it to convict the appellant.

9. It is the opinion of this court that the trial court properly directed itself on facts and law and convicted the appellant.

The conviction was safe and sound and is hereby affirmed with the result that grounds one(1) to five(5) of the grounds of appeal are devoid of merit and are hereby overruled.

Ground six(6) is on sentence and is equally devoid of merit and is also overruled for the reason that the sentence imposed by the trial court was lawful and indeed very lenient as **Section 234** of the **Penal Code** provides for life imprisonment for a person found guilty of causing grievous harm to another.

10. It was surprising that the respondent did not call for the enhancement of the sentence by this court.

Be that as it may and in the upshot, this appeal is lacking in merit and is hereby dismissed in its entirety.

Ordered accordingly.

(Delivered and signed this 26th day of November, 2020)

J.R. KARANJAH

JUDGE OF THE HIGH COURT



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