



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**OF KISII**

**Criminal Appeal 355 of 2002**

**PETER OMOLLO OGUTU ..... APPELLANT**

***VERSUS***

**REPUBLIC ..... RESPONDENT**

**(From original conviction and sentence of the Senior Resident Magistrate's court at Homa-Bay in criminal case No. 1500 of 2001 – B. OCHIEG – SRM)**

**JUDGMENT**

Appellant was convicted by the Senior Resident Magistrate Homa-Bay for the offence of attempted murder contrary to s.220 9a) P.C. Particulars were that on 20<sup>th</sup> November 2001 at Kowili sub-location in Homa-Bay District he attempted to cause the death of Alex Otieno Opondo by cutting him with a panga. He was sentenced to ten years imprisonment. His appeal is against both conviction and sentence.

The prosecution case was that on 20/11/01 at 11 a.m. appellant found the complainant Alex Otieno Opondo (PW1) at his shamba. PW1 was discussing with one mzee Ondingo Obonyo. The wife of PW1 Pamela Atieno (PW4) was also there. Appellant asked complainant to lend him his trouser as he wanted to go for a safari. Complainant who was appellant's cousin told him he had no good trouser. Appellant then turned to mzee Ondingo and started to quarrel him. Appellant produced a panga he had hidden in his trouser and hit Ondingo three times with the blunt side. When complainant intervened appellant turned on him and cut him several times fracturing his hand. Complainant and his wife raised an alarm and complainant's brother Nicholas Otieno Okunya (PW3) rushed there. He found appellant with the bloodstained panga.

The complainant was taken to Homa-Bay Hospital where he was admitted. That afternoon appellant was arrested near the ward where complainant was admitted. He had a knife. He was taken to police station and charged.

In defence the appellant said he heard people talking about him saying he had let his animals in another person's farm. He found the complainant and Ondingo. They were armed with pangas and clubs. Complainant hit him with the blunt side of the panga. Ondingo raised his panga to cut the appellant but he missed and cut the appellant. He said he later went to hospital for treatment and was

arrested there.

As first appellate court I have re-evaluated all the evidence. I find the evidence overwhelming and that the appellant was properly convicted. PW1, 2 and 4 candidly narrated how the complainant was attacked and cut several times. The appellant had hidden a panga in his trouser pockets. PW2 the clinical officer who examined the complainant explained the injuries he suffered. They were many and could easily have led to his death.

Appellant was later arrested at the hospital the same day with a knife. It was obvious that he had gone there to finish the job he had started.

The magistrate did consider the appellant's defence and he properly rejected it. It did not challenge the very strong evidence by prosecution witness.

As for sentence though the complainant was seriously injured 10 years was a bit harsh and excessive. The appellant was a first offender. In mitigation he said he had two wives and 7 children one cripple and another blind. He should have been given a lesser sentence in the circumstances.

The upshot of the above is I dismiss the appeal against the conviction. I however allow appeal against the sentence and substitute it with one of 5 years imprisonment.

Dated 16<sup>th</sup> December 2005

**KABURU BAUNI**

**JUDGE**

Cc – Mobisa

Mr. Chirchir for State

Appellant present



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