



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI
HIGH COURT CRIMINAL APPEAL NO. 303 OF 1999

**FROM THE ORIGINAL CONVICTION AND SENTENCE IN CASE
NO. 55 OF 2002 IN THE DISTRICT MAGISTRATE' S COURT AT
GICHUGU BY MR. B. G. MAINA – D.M.I)**

PETER GACHAGO CHIUMA APPELLANT

VERSUS

REPUBLIC RESPONDENT

J U D G M E N T

Peter Gachago Chiuma hereinafter referred to as the Appellant was tried and convicted by the District Magistrate Gichugu for the offence of “Maim Harm contrary to section 234 of the Penal Code. It was alleged that on the 14th day of February 1999 at Gatugura village in Kirinyaga District of Central Province unlawfully did maim harm to Leah Kirigo Chiuma.

The evidence before the trial magistrate was that on the material day the Appellant was fighting with his wife when the complainant who is the mother of the Accused went to intervene. It was then that the Appellant hit the complainant on the mouth causing one of her incisor teeth to fall off. A second tooth which was loose had to be removed by the Doctor. The Appellant’s brother Michael Chiuma (PW3) apprehended the Appellant and took him to Gatugura Chief’s Camp. The Appellant was later taken to Kianyaga police station where he was re-arrested by PW4 P.C. Daniel Kingori. He was subsequently charged with this offence.

In his defence the Appellant denied hitting the complainant and claimed he was fighting with his wife.

The trial magistrate accepted the evidence for the prosecution that the Appellant hit the complainant as a result of which the complainant lost her teeth. He therefore found the Appellant guilty convicted him and sentenced him to 18 months imprisonment. I have carefully re-considered and re-evaluated the evidence that was adduced before the lower court. I am satisfied that the evidence against the Appellant was clear that in the course of his fight with his wife he hit his mother who was trying to intervene and that his mother did sustain injuries. Concern however is the charge which was laid before the court (as set out above. There is no offence known in law “MAIM HARM”. The offence created by the penal code under section 234 is causing grievous harm and not maim harm. The Appellant was therefore tried and convicted of an offence not known in law.

On this technical ground the conviction against the Appellant cannot stand. It is accordingly quashed and sentence set aside and substituted thereof with an order acquitting the Appellant of the charge.

It is noted that the Appellant has already served the sentence of 18 months and no further orders will therefore be made.

Dated signed and delivered at Nyeri on this 23rd day of February 2004.

H. M. OKWENGU

JUDGE



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