THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CRIMINAL APPEAL NO. 0217 OF 2016

5 **1. MONDAY GODFREY**

2. TWINOMUJUNI MUSA..APPELLANTS

VERSUS

UGANDA..RESPONDENT

(Appeal against decision of the High Court in Criminal Appeal No. 36 of 2015
10 *before Hon. Justice John Eudes Keitirima dated 12/08/2016)*

Coram: **Hon. Lady Justice Elizabeth Musoke, JA**

Hon. Lady Justice Hellen Obura, JA

Hon. Mr. Justice Ezekiel Muhanguzi, JA

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JUDGMENT OF THE COURT

Introduction

This is a second appeal arising from the judgment of the High Court which confirmed the conviction and sentence by the Chief Magistrate's
20 court of the two appellants for doing an act intended to cause grievous harm, contrary to Sections 216 (a) of the Penal Code Act, to Nansamba Mary, Kwizera Godfrey and others.

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Brief background

The facts of this case as far as we could ascertain from the record are that on 7th day of September 2013, the appellants and others, with the intent to cause grievous bodily harm attacked Nansamba Mary, Kwizera

30 Godfrey and others in the garden arising out of misunderstanding on who was to sow maize in the garden. The case was reported to police and the appellants were arrested. Consequently, they were charged with the offences of doing an act intended to cause grievous harm contrary to Section 216 (a) of the Panel Code Act.

35 At the trial, they pleaded not guilty and the prosecution led evidence of six (6) witnesses to prove its case against the appellants. The trial Chief Magistrate found that the prosecution had proved its case beyond reasonable doubt against the appellants and convicted the appellants on two counts of the offence of doing an act intended to cause grievous

40 harm contrary to section 216 (a) of the Penal Code Act, acquitted them of the offence of assault occasioning actual bodily harm and sentenced them to three (3) years imprisonment on each count and ordered them to compensate the victims shs.2,000,000/=.

The appellants were dissatisfied with both conviction and sentence

45 hence appealed to the High Court vide Criminal Appeal No. 36 of 2015 wherein the High Court dismissed the appeal and upheld the conviction and sentence of the trial Chief Magistrate. Being dissatisfied with judgment of the learned appellate judge of the High Court, the appellants have now appealed to this court on a second appeal on the

50 four grounds set out in the memorandum of appeal as follows:-

"1. ***That the learned appellate judge erred in law when he upheld the decision arrived at by the trial Chief Magistrate without exhaustive and proper evaluation of evidence on record.***

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2. *That the learned appellate judge erred in law when he upheld the decision of the trial Chief Magistrate in disregard of major inconsistences and contradictions in the prosecution's evidence thus arriving at a wrong conclusion.*

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3. *The learned appellate judge erred in law when he upheld the conviction of the appellant of the offence of act intended to cause grievous harm contrary to Section 216 (a) of the Penal Code Act Cap 120 without sufficient evidence to prove the essential ingredients of the offence.*

4. *The learned judge erred in law when he upheld the conviction of the appellants in total disregard of the evidence of the appellants."*

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Representation

The appellants were represented by Mr. Joseph Kyazze and Mr. Ronald Oine learned counsel on Private Brief while the respondent was represented by Ms Florence Akello, Assistant Director of Public Prosecutions. The appellants were present.

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Submissions by the Appellant

Counsel for the appellants submitted on ground one that the trial court failed in its duty to evaluate the evidence on record and that the first appellate court did not re-evaluate the evidence. He pointed out that both courts selectively considered the evidence and thus reached a wrong conclusion that the appellants were guilty of the offence of doing an act intended to cause grievous harm.

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On ground two, counsel argued that the prosecution's case was full of contradictions especially PW1's evidence as to who actually cut her.

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On grounds three and four, counsel submitted that the evidence on record did not prove beyond reasonable doubt the ingredient of

intention to cause harm and as such both the trial court and the first appellate court failed in their duty to evaluate and re-evaluate respectively the evidence on record and disregarded the appellant's case. He asked this court to allow the appeal, quash the appellant's conviction and set aside their sentence.

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Submission by the Respondent.

Ms. Akello, learned counsel for the respondent submitted that both the trial court and the first appellant court properly evaluated the evidence on record and thus came to a right decision that the appellants were guilty of the offence they were convicted of. She submitted that both courts relied on PW1's evidence which was corroborated by PW3's evidence. Counsel argued that both witnesses knew the appellant before and the incident took place between 7:00 – 8:00 a.m. in the morning and as such the appellant was properly identified and put at the scene of the crime.

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Counsel further submitted that the medical report proves the nature of the injuries caused. She pointed out that the injuries sustained by PW1 were classified as grievous harm and thus proved the offence of doing an act intended to cause grievous harm against the appellants.

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Counsel submitted that both the trial and the first appellate court rightly found that there were no major contradiction in the prosecution's case. She prayed court to confirm the conviction and sentence of the appellant.

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Consideration by Court

We have carefully read the submissions of both counsel. This being a second appeal, this court has a duty to appraise the inferences of fact drawn by the trial court See: Rule 32 (2) of the Judicature (Court of

110 Appeal Rules) Directions SI 13-10 and ***Kifamunte Henry V Uganda,*** *Supreme Court Criminal Appeal No. 10 of 1997.*

The appellants raised four grounds of appeal and argued all the grounds separately in his written submissions. We find grounds 1, 2, and 4 interrelated and we shall consider the three grounds together.

115 It was submitted for the appellants that both lower courts did not evaluate the evidence on record as a whole and ignored the major inconsistences in the prosecution's case and thus came to a wrong conclusion that the appellants were guilty of doing an act intended to cause grievous harm. Counsel further contended that the evidence on 120 record does not show who actually cut the victims in this case. He pointed out that the evidence of PW1 and PW3 contradicted as to whether it was the 1st appellant or the 2nd appellant who cut them during the scuffle.

In dealing with the above issues, the learned appellate Judge stated at 125 pages 94 and 95 of the record of appeal as follows:-

> ***"PW1 who is a mother to appellant 1 was emphatic as to who cut her. She said this in her evidence in court and her statement to the police which was tendered in court as defence exhibit 1. PW1 stated clearly both in her evidence in court and in her statement to the police that it was 130 appellant 1 who cut her with a hoe. Her evidence was corroborated with medical evidence as indicated in PF3 which was tendered in court and marked exhibit P.2. The injuries were classified as grievous harm. The trial court was also able to observe PW1's hand and proved that it was indeed cut. On cross examination PW1 denied that A1 had come to stop 135 the fight***
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> ***In his defence A1 acknowledges that there was a scuffle on the said day involving his mother (PW1) and his other siblings. He however denied that PW1 had been beaten. In his defence A2 acknowledged that PW1 had been pushed by Lydia (DW3) though she was doing it in self defence.***

140 ***A2 also acknowledges that he had a hoe though he only used it in self defence. They claimed that A1 was not at the scene when the fight ensued. However DW5 Twesigye Simeon testified that by the time PW1 and company came to attack them, A1 was at the scene (garden) planting maize. Though he contradicts himself again to state that by the time the***
145 ***fight ensued. A1 was not at the scene. This all goes to show that the appellants and their witnesses were not truthful. There was evidence led by the prosecution that indeed PW1 and PW3 were attacked and Medical evidence to prove that claim was tendered in court as exhibit P.1 and P.2. A1 and A2 were both biological and step sons of PW1 respectively and she***
150 ***would not have failed to properly identify them in broad day light when the attack took place".***

Further, in regard to contradictions in the prosecution's case, the evidence of PW1 as to who actually cut PW1, the High Court was guided by the principles stated in ***Alfred Tajar V Uganda,*** *Criminal*
155 *Appeal No 1667 of 1969.* The learned judge found that PW1 was consistent in her evidence in Court that the appellants found her in the garden and assaulted her. According to the learned trial Judge, the evidence of wounding was consistent throughout and was also medically proved and what went to the root of the matter is what the
160 appellants did to PW1 and PW3 and not who arrived there first. The High Court thus found that although there were contradictions, as to who arrived in the garden first and as to who cut PW1, these were minor and immaterial and did not go to the root of the matter.

The first appellant did admit that there was a scuffle on the said day
165 involving his mother (PW1) and his other siblings though he denied that PW1 was beaten. The second appellant admitted that he had a hoe though he only used it in self defence. The first and second appellants are biological and step sons of PW1 respectively who she knew very well which ruled out the possibility of mistaken identification. We are

170 therefore unable to fault the findings made by the first appellate court. In the premises, grounds 1, 2 and 4 fail for lack of merit.

Ground three

In determining the existence of intention in the offence of doing an act intended to cause grievous harm contrary to Section 216 (a) of the 175 Penal Code Act, the trial Magistrate found that PW1 was cut on the hand with a hoe though, the first appellant had aimed at her head. Further, that PW3 was injured on his head with a hoe which also maimed his eye. This was corroborated with the medical report which classified the injuries sustained by PW1 and PW3 as "grievous harm." 180 In view of the trial Magistrate's findings, it is our opinion that the object used in the commission of the offence and the body parts injured, the appellants had the intention to cause grievous harm to PW1 and PW3.

We agree with the trial Magistrate's findings that since the appellants watched PW1, PW2, PW3 and others go to the garden and planned to 185 go and attack them, they had the intention to cause harm. We are therefore unable to fault both the trial court and the first appellate court on their finding that the ingredient of "intention" was proved beyond reasonable doubt. This ground also fails.

Conclusion

190 In the result, we find that this appeal lacks merit and it is therefore dismissed. We uphold both the conviction and sentence.

Dated this ......3rd......day of ......February......2019.

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195 Elizabeth Musoke

Justice of Appeal

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Hellen Obura

Justice of Appeal

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Ezekiel Muhanguzi

Justice of Appeal