

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MBARARA

HCT-05-CR-CN-0049b-2002
(From Criminal Case No. 380/99)

KEKISHENGYE..... APPELLANT

-VS-

UGANDARESPONDENT

BEFORE: THE HON. JUSTICE P. K. MUGAMBA

JUDGMENT

This is an appeal against both conviction and sentence. It is against the decision of the Grade I Magistrate, Ntungamo of 25th October 2002 whereby the appellant was convicted of causing grievous harm and sentenced to 21 months' imprisonment. Three grounds of appeal are set out in form following:

1. The trial Magistrate erred in law for convicting the appellant for an offence not proved beyond reasonable doubt.
2. The trial Magistrate erred in law to convict the appellant who had a clear defence of provocation
3. The sentence was harsh and unjustified in the circumstances.

I have looked at the record and at the judgment. I have also heard the submissions of counsel. Both PW1 and PW2 testified that the appellant did hit the accused on the head with a stick. Not surprisingly defence witnesses do not mention that appellant hit the complainant anywhere save for DW3 who says there was a fight between complainant and appellant and that they were later separated. I find the prosecution evidence shows there was an assault. I am satisfied this has been proved beyond reasonable doubt. However I find nowhere in the prosecution evidence that appellant caused the complainant grievous harm. That being the case the proper finding should have been a conviction for common assault, contrary to section 227 of the Penal Code. I find therefore that a conviction for common assault be substituted for that of grievous harm.

See *Uganda - vs- Fred Rutoroki [1979] HCB 253.*

Regarding the second ground, I am not persuaded provocation is available to the appellant. This ground should fail.

As for the third ground, having pronounced myself in the first ground I agree that the sentence was harsh in the circumstances. A sentence of six months' imprisonment will be substituted for that of 21 months imprisonment which I hereby set aside.

In the result a conviction for common assault contrary to section 227 of the Penal Code and a sentence of six months' imprisonment are accordingly substituted.

P.K. Mugamba

Judge

12th March 2003

Appellant in court

Mr. Mwene-Kahima for appellant

State Attorney in court

Ms Tushemereirwe court clerk

Court:

Judgment read out.

P.K. Mugamba

Judge