



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISII**

**CRIMINAL APPEAL NO.71 OF 2003**

**(From original conviction and sentence of the SRM's court at Homa Bay in criminal case No.832 of 2002.)**

**PETER OCHIENG KANUT ..... APPELLANT**

**VERSUS**

**REPUBLIC ... RESPONDENT**

**JUDGMENT:**

The complainant said he was attacked on 5/7/2002. PW2 said that the complainant complained to him about the attack on the 30/6/2002 which would be about one week before the attack.

The clinical officer Eliud Okelo Okeyo (PW1) said that he examined the complainant for injuries inflicted on him during the attack charged against the appellant on the 16/6/2002! These discrepancies were never addressed by the learned magistrate in his judgment. Moreover the conviction was based on the evidence of a single identifying witness whose evidence was not conclusive: a mistake could have been made by the complainant. Also, PW1 said that when he was attacked he was with one Kijede Kikoro who inexplicably was not called to testify on the matter. There were thus glaring loopholes in the prosecution case which should have been resolved in favour of the appellant. The state counsel does not support conviction.

Accordingly I allow the appeal. I quash conviction and set aside the sentence. It follows that the appellant shall be set at liberty forthwith unless he is held on another warrant.

**DATED AND DELIVERED ON THE 30TH OF MAY 2003**

**I.C.C. WAMBILYANGAH**

**JUDGE**