



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

**Criminal Appeal 89 of 2005**

**GATI GOROGORO ROBI ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

**(From original conviction and sentence of the SRM's court at Kehancha in criminal case No. 373 of 2004)**

**JUDGMENT:**

Appellant was convicted for offence of grievous harm by Kehancha Resident Magistrate court and sentenced to 3 years imprisonment. Particulars were that on 26<sup>th</sup> January 2004 at Masaba Location in Kuria District he unlawfully did grievous harm to Francis Mogosi Chacha.

The appellant had been charged with two other people who too were convicted and sentenced. He was the first accused person.

Prosecution case was that on 26/1/04 at about 8.45 p.m. the complainant was with the appellant and the other two accused in the home of accused 3 drinking changaa. He had shs.5600/-. The three people attacked and stole his money. They hit him on the hand and he fell unconscious.

PW3 informed his wife who took him to hospital. Report was made to police and the appellant and the others were arrested and charged.

The appellant denied the offence. He said on that day at 10 p.m. he was in his house sleeping. AP's from Masaba camp went and arrested him.

This being a first appellant court has evaluated all the evidence. There are no doubts that complainant was assaulted and suffered grievous injuries on the hand.

PW5 Clement Ongondi a clinical officer who examined him tabulated the injuries. PW1 was the only eyewitness as PW3 SAMWEL CHACHA who was with him had left briefly to buy cigarettes. He returned to find him unconscious. However the evidence of PW1 though being that of a single witness and the incident having took place at night was very candid and the trial court properly relied on it to convict. The complainant and the appellant had been drinking in the house together. Though the court has not been told the source of light in the house these were people who met together since 7 p.m. They knew each other. Complainant was assaulted in the very house they were drinking in. Infact the appellant and the others were lucky not to be charged with offence of robbery with violence as it was said they stole his shs.5600/- .

The sentence of 3 years imprisonment was not at all harsh in the light of the serious injuries suffered by the complainant. The offence carries a maximum life sentence and 3 years imprisonment was fair.

I therefore reject and dismiss the appeal.

Dated 4<sup>th</sup> April 2006.

**KABURU BAUNI**

**JUDGE**

Cc – Mobisa

Mr. Kemo for the State

Appellant present