



REPUBLIC OF KENYA



**Okello v Republic (Criminal Appeal 93 of 2023)  
[2024] KEHC 13275 (KLR) (29 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 13275 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
CRIMINAL APPEAL 93 OF 2023  
DR KAVEDZA, J  
OCTOBER 29, 2024**

**BETWEEN**

**FREDRICK OKELLO ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal against the original conviction and sentence delivered by  
Hon. E Riany (SRM) on 29th September 2022 at Kibera Chief Magistrates  
Court Criminal Case No.1129 of 2022 Republic vs Fredrick Okello)*

**JUDGMENT**

1. The appellant was charged with two counts of the offence of grievous harm contrary to section 234 of the *Penal Code*, Cap 63 Laws of Kenya. After a full trial, he was sentenced to serve ten (10) years imprisonment on each count.
2. Being aggrieved, he filed an appeal challenging his conviction and sentence. In his petition of appeal, he challenged the totality of the prosecution's evidence against which he was convicted. He complained that the trial court failed to consider his defence. He challenged the sentence imposed as being harsh and excessive. He urged the court to quash his conviction and set aside the sentence imposed.
3. The matter was canvassed by way of written submissions which have been duly considered.
4. As this is a first appeal, I am required to re-evaluate the evidence tendered in the trial court and come to an independent conclusion as to whether or not to uphold the convictions and sentences. This task must have regard to the fact that I never saw or heard the witnesses testify (see *Okeno v Republic* [1973] EA 32).
5. The prosecution's case was that on the day in question, Gloria Atieno (PW1) left her 6-month-old twins in the care of their father, the appellant, while she visited a neighbour around 7:00 am to teach



- her how to make samosas. When she returned home at 10:00 am, she found E.T. crying and R.I. with a swollen head, looking weak. Concerned, PW1 asked the appellant what had happened. He claimed that R.I. had fallen from the bed.
6. When PW1 tried to take the children, the appellant refused, placing E.T. on a seat and taking R.I. to the bed. Despite her request to breastfeed R.I., he denied her access, forcing PW1 to take the child by force. The baby nursed briefly before stopping. Growing more suspicious, PW1 questioned him again, pointing out that the children had never fallen from the bed before. The appellant became aggressive, pushing her against a wall and stepping on her neck. As both children cried, PW1 insisted on taking them to the hospital, but the appellant refused
  7. The following morning, PW1 noticed that R.I. was having trouble breathing. She took him to Langata Health Centre, where doctors rushed him to Kenyatta National Hospital in an ambulance. While R.I. was placed on oxygen, PW1 asked the appellant to bring E.T. to the hospital for breastfeeding. Her mother, Lydia Nafuna, was also called to help care for E.T. since PW1 had to remain admitted with R.I.
  8. While changing E.T.'s diaper, Lydia noticed the baby screaming in pain whenever her legs were touched. Alarmed, she called the doctors, and an X-ray confirmed a fracture. PW2 later testified that she knew the appellant as her son-in-law.
  9. Dr. Kamau Kariga (PW3) who filled out P3 forms for both children, reported that R.I. had suffered a left femur fracture, multiple cerebral infarcts, and superior sagittal sinus thrombosis, injuries classified as grievous harm. E.T. had a fracture in her left tibia and fibula, also categorized as grievous harm. Due to the nature of the injuries, hospital staff suspected child abuse and reported the matter to the police.
  10. PC George Macharia took over the investigation, leading to the arrest and subsequent charging of the appellant.
  11. In his sworn defence, the appellant contended that on the material day, he woke up at 7:00 am to find his wife, PW1, missing. After returning from the shop at 8:07 am, he discovered his son, R.I., had fallen from the bed, while his daughter, E.T., was crying. PW1 returned at 10:05 am and claimed she had been learning to cook. Despite urging her to take R.I. to the hospital, she refused, fearing frequent visits would bring curses. The next morning, she left with R.I. for the hospital, and he later received a call to bring E.T. to Kenyatta Hospital, where he was subsequently arrested. He admitted the children's injuries were inconsistent with a fall from a normal bed.
  12. The trial court considered the evidence in totality and convicted the appellant on both counts.
  13. Section 234 of the [Penal Code](#) provides for the offence of Grievous Harm as follows:  
Any person who unlawfully does grievous harm to another is guilty of a felony and is liable to imprisonment for life.
  14. Section 4 of the [Penal Code](#) defines grievous harm as follows: -  
“grievous harm” means any harm which amounts to a maim or dangerous harm, or seriously or permanently injures health, or which is likely so to injure health, or which extends to permanent disfigurement, or to any permanent or serious injury to any external or internal organ, membrane or sense;
  15. Evidence of grievous harm in this case was primarily established through several key elements. First, medical reports by Dr. Kamau Kariga completed P3 forms that documented the severe injuries sustained by the children. R.I. was found to have a left femur fracture, multiple cerebral infarcts, and



superior sagittal sinus thrombosis, all of which indicate life-threatening injuries. Similarly, E.T. was diagnosed with a fracture of the left tibia and fibula.

16. The diagnosis of grievous harm was corroborated by the hospital observations at Kenyatta National Hospital, where medical staff noted the severity of the injuries, which raised immediate suspicions of child abuse.
17. Gloria Atieno, the mother, and Lydia Nafuna, the grandmother, provided accounts of the children's condition and the distressing circumstances surrounding their injuries. Furthermore, an X-ray conducted on E.T. revealed a fracture, serving as direct physical evidence of the harm inflicted.
18. Together, these elements painted a grim picture of the children's injuries, firmly establishing the presence of grievous harm and pointing towards a troubling narrative of potential abuse or neglect.
19. From the record, it is not clear the weapon used against the victims. Medical evidence confirmed that the injuries were a result of blunt force trauma. Section 231(b) of the Penal Code on acts intended to cause grievous harm refers to the use of a dangerous or offensive weapon. The term used by the medical practitioner who filled the P3 form indicated that the weapon that inflicted the harm was blunt, and the injuries sustained were classified as grievous harm.
20. On mens rea, there is no question that it is unlawful to strike, cut, or otherwise wound another person. The offence of grievous harm is, therefore, complete when the appellant intentionally assaults the complainant and causes grievous harm. The mens rea may only be taken away in the circumstances described under Section 9 of the *Penal Code*. Mens rea can only be taken away if it can be shown that the appellant was by reason of insanity (Section 12 of the *Penal Code*) or intoxication induced by the complainant (Section 13 of the *Penal Code*) not aware of what he was doing, or that it was unlawful. None of these factors were argued by the appellant.
21. In the end, I find that all the ingredients for the offence of grievous harm were proved against the appellant beyond reasonable doubt. The convictions on counts I and II are sustained.
22. On sentence, the appellant was sentenced to serve 10 years imprisonment on each count. Section 234 of the *Penal Code* provides that any person who unlawfully does grievous harm to another is guilty of a felony and is liable to imprisonment for life.
23. During sentencing, the trial court considered the appellant's mitigation and that he was a first offender. The sentence imposed was legal and appropriate under the circumstances.
24. In the end, I find that the appeal is found to be lacking in merit and is dismissed.

Orders accordingly.

**JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 29<sup>TH</sup> DAY OF OCTOBER 2024**

**D. KAVEDZA**

**JUDGE**

In the presence of:

Appellant Absent

Omurokha for the Respondent

Achode Court Assistant

