



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Matunda (Criminal Appeal E015 of 2021)
[2022] KEHC 9885 (KLR) (23 June 2022) (Judgment)**

Neutral citation: [2022] KEHC 9885 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL APPEAL E015 OF 2021
HK CHEMITEI, J
JUNE 23, 2022**

BETWEEN

REPUBLIC APPELLANT

AND

JESISTER KERUBO MATUNDA RESPONDENT

*(Being an Appeal from the Judgement of Hon. J Omido (PM) in
Nakuru Criminal Case No. 2573 of 2015 dated 20th November 2018)*

JUDGMENT

1. The respondent was charged with the offence of Assault Causing Actual Bodily Harm Contrary to Section 251 of the *Penal Code*. The particulars of the offence were that on the August 17, 2015 at Ndimu area in Lanet within Nakuru county, unlawfully assaulted Agnes Joan Wangechi Ollie thereby occasioning her actual bodily harm.
2. The matter proceeded to full hearing and the respondent was acquitted under Section 215 of the *Criminal Procedure Code*. The appellant being dissatisfied has filed this appeal citing several grounds the substance of which is that the trial court was wrong in finding that it had not proved its case beyond any reasonable doubt; that failure to call one mama Lydia was fatal and that it was wrong for the court not to have distinguished the medical evidence produced by the respondent.
3. When the matter came up for directions the court ordered the same to be determined by way of written submissions which the parties have complied. Before looking at the same it shall be appropriate to summarise the evidence as presented during trial.
4. PW1 Joan Wangechi Agnes, the complainant testified that the respondent was her neighbour and that they have had a long boundary dispute. That on the August 17, 2015 at around mid-day she was at home and her worker, Christine, told her that the respondent had said that she should close her chickens for they had destroyed her millet.



5. She said that as she went to the stage she met the respondent who followed her and kept insulting her. She went to one mama Lydia and on the way she was attacked by the respondent who hit her with her fists. She was restrained by her husband from further assaulting her. She reported the matter to the police who referred her to the hospital
6. She went to Aga khan hospital where she was treated and P3 form filled. When cross examined she said that she did not respond when she was hit.
7. PW2 Martha Wairimu Muiru testified that both the respondent and PW1 are her neighbours and she was there when the respondent assaulted PW1. She said that the two had not been in good terms for a long time because of a boundary dispute. She also said that she had a grudge with her.
8. When cross examined by the respondent she said that she did not testify against her because of the differences she had with her.
9. PW3 Kamau wa Ngarua testified that he was 82 years old and he saw the respondent assaulting the complainant using a stone. He said he was about 100 meters away.
10. PW4 Ongeru Obae testified that she was home on that particular day and she saw the respondent assault the complainant by slapping her face twice. Although she picked a stone she did not use it to hit her. She said that she had some differences with the respondent.
11. On cross examination she said that the respondent was her in law and the elders have not sat them down to resolve their differences.
12. PW5 PC Eudiah Sara from Lanet police station was the investigating officer. She said that she recorded the witness statements and issued the P3 to the respondent. The issue between the two was to do with the chickens of the respondent destroying the complainant's crops.
13. PW6 Dr. Wangechi Warui from Nakuru PGH testified and produced the P3 form. She said that she relied on the records from Aga khan hospital and her findings were that she had soft tissue injuries which she classified the same as harm.
14. She said that the P3 form by one "Dr". Marugu was not admissible as he was found not to be a qualified doctor. He was found to be an imposter.
15. When the matter came up for defence hearing the respondent gave sworn defence denying the charge. She only relied on the two P3 forms and termed the same inconsistent. She did not call any other witness.

Analysis and determination.

16. Having perused the trial court proceedings, the submissions of both the appellant and the respondent, this court is of the considered opinion that the trial court was in error in acquitting the respondent. There was in my view sufficient evidence that the respondent assaulted the complainant. The witnesses who saw the incident taking place at noon were sober enough and despite the minor contradictions on whether she used the stone to assault her or her fist I find the same did not oust the fact that the offence was committed.
17. In the premises, and so as not to raise much issues, and jeopardise the further directions of this court and or prejudice the parties, it is hereby ordered that a retrial be conducted again before another court other than Hon. J Omido.



18. The appeal is otherwise allowed. Matter be mentioned before the chief magistrate court for further directions.

DATED SIGNED AND DELIVERED AT NAKURU VIA VIDEO LINK THIS 23RD DAY OF JUNE 2022.

H K CHEMITEI.

JUDGE

