



**Adiedo v Republic (Criminal Appeal E083 of 2023)  
[2025] KEHC 6748 (KLR) (6 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 6748 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MIGORI  
CRIMINAL APPEAL E083 OF 2023  
A. ONG'INJO, J  
FEBRUARY 6, 2025**

**BETWEEN**

**CHARLES JUMA ADIEDO ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal against the Judgment of Hon. S.N Mutava, Resident Magistrate and delivered on 25th July 2023 in Rongo CR. Case No. E026 of 2021, Republic Vs Charles Juma Adiedo)*

**JUDGMENT**

**Background**

1. The Appellant was charged with offence of causing grievous harm contrary to Section 234 of the [Penal Code](#).
2. The particulars are that on the 11<sup>th</sup> day of November 2020 at about 0800hrs at Kwe Village Rabondo sub –location in Awendo Sub County in Migori County within the Republic of Kenya the Accused person Charles Juma Adiedo willingly and unlawfully did grievous harm to Magdaline Atieno.
3. The trial Magistrate considered the evidence of four Prosecution witnesses and the Accused Parsons's defense together with Accused person's witness evidence and gave a verdict that the Prosecution had proved its case without beyond reasonable doubt and convicted the Accused person.
4. Consequently, the Accused was sentenced to serve ten years' imprisonment.
5. Being aggrieved by the conviction and sentence the Appellant preferred petition of Appeal for leniency on 6<sup>th</sup> of December 2023 on the ground that the sentence meted out although lawful was manifestly harsh and excessive in the circumstances and prayed that the same be reduced.



6. In the Appellant's submissions filed on 20<sup>th</sup> September 2024 he did give additional grounds to the effect that:
  - a. The trial Court erred in both law and fact by not considering that his rights for fair hearing as stipulated under Article 49(1)(f) (i) of the Kenyan Constitution 2010 had been violated.
  - b. The trial Court erred in both law and fact by not observing that the charge sheet was defective.
  - c. The trial Court erred in both law and facts by meting a sentence on contradictory evidence of PW1 and PW2.
7. In his written submissions, the Appellant said that he was arrested on 13<sup>th</sup> January 2021 and arraigned in Court on 18 January 2021. He said that the delay in arraigning him in court was due to the fact that the evidence was not sufficient to enable the Police to charge him.
8. In further submissions, the Appellant claimed that due to his age and that it was his first appearance in Court he got confused. He said that the charge sheet indicated that the offence was committed on 11<sup>th</sup> of November 2020 but PW1 said that the offence was committed on 11<sup>th</sup> of December 2020 at 11:00 p.m.
9. He said that PW2 contradicted PW1s evidence by saying that the offence was committed on 11<sup>th</sup> of December 2020 at 0800hrs. The Appellant cited the Court of Appeal holding in *Bernard Ombuna Vs Republic* to support his position that the charge sheet was defective where it was held:

“In a nutshell, the test of whether a charge sheet is fatally defective is substantive rather than formalistic. Of relevance is whether a defect on the charge sheet prejudiced the appellant to the extent that he was not aware of or at least he was confused with respect to the nature of the charges preferred against him and as a result, he was not able to put up an appropriate defence. Was this the case here?”
10. The Appellant in further submissions questioned how PW2 could have seen him cut the Complainant if he ran away after seeing his father being hit on the left side of the head by Michael. He also questioned why the villagers who responded to the alarm did not trace and arrest him where he was hiding and why none of them recorded a statement and testified in Court.
11. The Appellant finally submitted that the sentence against him was manifestly harsh and excessive in the circumstances considering his mitigation, age and the probation officer's report. He urged the court to reduce his statement on humanitarian grounds.
12. The Respondent's submissions are to the effect that the Appeal should be dismissed and the conviction and sentence upheld. It was argued that the prosecution had proved that the Appellant intentionally caused grievous harm and the Doctor PW3 examine the complainant and confirmed that she suffered a compound fracture in the left arm between he r shoulder and elbow. That the sais injury was serious and the complainant will not have normal functioning of the said hand especially considering her age. That the Appellant was in his right sense and aware of what he was doing when he committed the unlawful Act of cutting the complainant. The Respondent therefore argued that their witnesses testimonies were rebut and the case against the Appellant proved beyond reasonable doubt.



## Analysis and Determination

13. In a first appeal, the duty of the court was held in *Mark Oiruri Mose vs. R* (2013) eKLR thus;  

“... the Court is duty bound to revisit the evidence tendered before the trial court afresh, evaluate it, analyze it and come to its own independent conclusion on the matter but always bearing in mind that the trial court had the advantage of observing the demeanor of the witnesses and hearing them give evidence and give allowance for that.”
14. Having considered the grounds of Appeal, and revisited the evidence tendered before the trial court afresh as well as the submissions by the rival parties, the issues for determination are whether the ingredients of the offence of grievous harm were proved beyond reasonable doubt.
15. The Appellant faulted the Court for failing to consider his rights to fair hearing as stipulated under Article 49(1)(f)(i) of *the Constitution*. In his submissions he said that there was a delay in arraigning him in court and he explained that the delay was due to the fact that the evidence was not sufficient to enable the police to charge him.  

Article 49(1)(f)(i) of *the Constitution* states as follows:

“ (1) An arrested person has the right--  
(f) to be brought before a court as soon as reasonably possible, but not later than--  
(i) twenty-four hours after being arrested”
16. The case of *Julius Kamau Mbugua v Republic* (2010) eKLR established the principle that a violation of the constitutional provisions stipulating the time within which an accused person must be produced in court does not give rise to an automatic acquittal because one can be adequately compensated by way of damages.
17. The Appellant is therefore not entitled to any order quashing the criminal proceeding against him as he can be adequately compensated by way of general damages upon proof of his claim.
18. On whether the charge sheet was defective on account of date and time when the offence was committed and alleged contradictions between the evidence of PW1 and PW2 this court has confirmed that the offence herein was committed on 11<sup>th</sup> of November 2020 at about 0800hrs, the medical report produced in court confirms that the offence was committed on 11<sup>th</sup> November 2020 at 0800hrs and PW1 said that she was ploughing her maize near her home when she heard her son Bernard and her grandchildren screaming and it cannot be possible that she was in the farm at 8:00p.m in the night.
19. PW1 said that she saw the Appellant commit the offence against her and it could only have been in the morning. PW2’s evidence also corroborated the fact that this offence was committed in the morning and not at night.
20. In the Appellant’s cross examination of the Prosecution witnesses, it did not appear that he was not aware of the nature of the charges preferred against him and he exhaustively cross examined those witnesses and also put up an appropriate defense. The contradiction shown in the evidence of PW1 and PW2 does not go to the substance of the charge and this court finds that it is not prejudicial to the Appellant in any way.



21. Concerning the sentence meted against the Appellant the offence of grievous harm contrary to Section 234 of the Penal Code provides:-

“Grievous harm Any person who unlawfully does grievous harm to another is guilty of a felony and is liable to imprisonment for life.”

22. In consideration of the circumstances under which the offence was committed, where the complainant’s son died, the kind of weapon used and part of the complainant’s body that was attacked this court finds that the sentence passed by the trial court was very lenient in the circumstances and cannot be overturned.

The appeal herein lacks merit and the same is dismissed.

Right of appeal 14 days explained.

**DATED, SIGNED AND DELIVERED THIS 6<sup>TH</sup> DAY OF FEBRUARY, 2025**

.....

**HON. JUSTICE A. ONGINJO**

**JUDGE**

In the presence of: -

