



REPUBLIC OF KENYA



**KENYA LAW**  
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**Juma v Republic (Criminal Appeal E001 of 2024)  
[2025] KEHC 2089 (KLR) (14 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 2089 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT SIAYA  
CRIMINAL APPEAL E001 OF 2024  
DK KEMEL, J  
FEBRUARY 14, 2025**

**BETWEEN**

**JOSHUA OMOLLO JUMA ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal from the judgment of Hon. P.J. Nandi (P.M) delivered on 31st January 2024 in Bondo Senior Principal Magistrate's Court Criminal case No. E050 of 2023)*

**JUDGMENT**

1. Joshua Omollo Juma was charged with the offence of grievous harm contrary to Section 234 of the [Penal Code](#). The particulars were that on 18<sup>th</sup> November 2022 at around 1800hrs at Oseno village, West Sakwa location in Bondo Sub County within Siaya County did grievous harm to Milton Awuondo Odera.
2. The matter proceed to full hearing whereupon the Appellant was convicted, and sentenced to three years' imprisonment.
3. Aggrieved by the said court's decision, the Appellant has appealed to this court on the following grounds:
  - i. The trial magistrate violated the appellant's right to fair trial under article 50 of [the constitution](#) when the trial proceeded without allowing the Appellant's witness to testify as required.
  - ii. That the trial magistrate erred in law and in fact in failing to appreciate that none of the prosecution witnesses proved to court that they saw the appellant attacking the complainant but all agreed that the appellant was 100 metres away from the scene.



- iii. That the trial magistrate erred in both law and fact by allowing the medical report to be presented in court by a medic who didn't prepare it.
  - iv. That the trial magistrate erred in law and in fact by admitting the statement of one Mr Benson Okoth Wanjala who failed to identify the Appellant and gave the appellant's name of Omondi Juma instead of Joshua Omollo Juma.
  - v. The trial magistrate erred in law and in fact for further allowing the statement of Jane Akinyi Odero which was contradicted since she also talked of Omondi Juma and not the Appellant Joshua Omollo Juma.
  - vi. The trial magistrate erred in law and in fact by not considering the evidence given in court which was talking about somebody else by the name Omondi Juma and not the Appellant Joshua Omollo Juma and as such the case was not proved beyond doubt and therefore the Appellant was wrongfully sentenced.
4. This being a first appeal, it is the duty of this Court to re-consider and to re-evaluate the evidence adduced before the trial Court with a view to arriving at its own independent findings and conclusion. (See *Okeno Vs. Republic* [1972] EA 32). In doing so, this Court is required to take cognizance of the fact that it neither saw nor heard the witnesses as they testified before the trial Court and, therefore, it ought to make due allowance in that respect as was held in *Ajode v. Republic* [2004] KLR 81.
  5. The prosecution called a total of five witnesses while the Appellant called four witnesses.
  6. PW1 Milton Samson Awuondo Odera testified that he is a farmer and businessman. He stated further that on 18/11/2022 at 6.00pm he was on his way back home when he branched into a piece of land where he had planted trees. That someone had destroyed some of them and he wanted to burn charcoal. That the chief had informed him that a certain person had vowed to plant other trees but that he had not. That the said person was the accused in court. That on the material day he was in his farm 200 metres away from him. That the Appellant had destroyed his fence and that he was trying to repair the same.

Suddenly, something hit him at the back of his head. He turned and saw that it was the appellant who had hit him with a piece of wood on the front side of the head then he ran away. That he was unconscious for a few minutes then one Ben assisted him to his house then to Bondo sub county hospital then later to Siaya County hospital for a CT scan. That his condition did not improve and that he was referred to Jaramogi Oginga Odinga teaching and referral hospital (JOOTRH) for further management. Another CT scan was done at West Kenya. He identified the discharge summary from JOOTRH marked as MFI 1, CT scan report for the head (MFI 2 a), CT scan report for the spine (MFI 2 b) from West Kenya Diagnosis Centre. That the report showed bleeding in the brain which required surgery which was done. That he reported at Maranda police post and recorded his statement. That he was issued with a P3 form dated 19/11/2023 which was filled at Bondo sub-county hospital. The same was marked as MFI 3.

That the Appellant disappeared but was later arrested. That the Appellant is his village mate and has known him for a very long time. That he had initially threatened to kill him and that he was charged. He identified the Appellant as the one in the dock.

On cross examination, he stated that he saw the accused very well when he hit him and that he was assisted to walk home after the said assault. That he was treated then thereafter reported the matter to the police. That he had a patient card from Siaya county hospital but forgot to show it to the court but he was relying on it. That the weapons were not recorded and that his brain was affected.



7. PW2 Benson Okoth Wanjala testified that he stays in Maranda and that he was working for the complainant. He recalled on 18/11/2022 at 6.00pm he was at the complainant's homestead when he came and called him to show him other places on the land that needed slashing. Then the complainant asked him to walk around the land then inform him on the amount of slashing required; so he left him at a particular spot on the land and he went round. That he later heard screams and that he ran back to where he had left the complainant and saw the appellant assaulting the complainant with a piece of wood. That he ran to the homestead and called the complainant's mother who came and took him to hospital. That the complainant was injured on the head. That he knew the appellant so well as he used to work together with him on ox plough and who hailed from the same area.

On cross examination, the stated that he left the complainant sitting and ran to call his mother. That when the complainant reached home, his clothes were blood stained, but that he did not bring clothes to court. That the name on the statement is Omondi Juma as the attacker, but maintains that he saw the appellant attacking the complainant. That he did not raise alarm as he was afraid that people would attack the appellant. That the complainant was taken to hospital on the same day.

8. PW3 Jane Akinyi Odera testified that she is a farmer and a church elder. She recalled on 18/11/2022 at 6.00pm she was at home with a church fellowship when he saw Ben running towards her and reported to her that Joshua Omollo had assaulted Milton. That she ran to the scene and saw Milton bleeding from the back of his head and forehead. That she organized and rushed him to Bondo sub county hospital where the head was stitched then he was referred to Siaya county hospital for a CT scan. That they returned to Bondo hospital at 1.00am where he was given medication and they went home. That at home, he stated vomiting and was unable to talk or write and they thus rushed him to Jaramogi Oginga Odinga Teaching and Referral Hospital where a surgery was done as he was bleeding in the brain. That he was admitted for a week. That he did not see the appellant assaulting the complainant as she was informed by Ben that he saw him assaulting the complainant. That the appellant is her neighbor.

On cross examination, she stated that it was Ben who brought the injured complainant home. That after informing her, he went back and brought the complainant. That she did not go to the appellant's home as she did not know the cause of the assault. That she did not hear the noise or commotion. That the chief had asked the appellant to plant the tree that he had destroyed.

9. PW4 Sergeant Magret Kwamboka of Nyamonye patrol base testified that she was the investigating officer and previously worked at Maranda police post. She recalled that on 19/11/2022 at around 12.10 pm the complainant went to her office to report that on 18/11/2022 at 6.00pm while he was at his shamba, the appellant who was his neighbor went and assaulted him. That the complainant had already been treated and stitched at Bondo hospital and that he was in a lot of pain and could not record a statement and that he went home. That she visited the scene and found that the appellant and the complainant shared a common boundary. That she recorded the statements of all witnesses and issued a P3 form that was duly filled. That the appellant was later arrested by the assistant chief and members of the public. That she then charged him accordingly.

On cross examination, she stated that the complainant was assisted by the mother and a worker. That it was one person who assaulted the complainant and who was the appellant. That the names in the charge sheet are the names the appellant gave her while the names in the statement of PW2 and PW3 are the names the appellant uses at home. That when she went to the appellant's home, the appellant ran away and that the witness statements were recorded before he was arrested. That she visited the scene on 27/11/2022. That they have a boundary dispute and that the complainant saw the appellant 100 metres away before he assaulted him. That the assistant chief was requested to resolve the boundary issue but the appellant refused and when the complainant was re-fencing the place he assaulted him.



10. PW5 John Okidi Bonde testified that he was a clinical officer from Bondo. That he had with him a P3 form in favor of the complainant. That the same had been filed by one Silas Agudha who no longer works at Bondo Hospital. That they had worked together for three years and was familiar with his hand writing and signature. That upon examination, he had severe bleeding at the right frontal region which made the patient to be confused. The age of injuries were some hours and that the weapon used was blunt object. The degree of injury was classified as grievous harm. That he was referred to Jaramogi Oginga Teaching and referral Hospital for management. The notes from the referral hospital showed that the patient suffered severe head injury secondary to assault. He produces the P3 form as exhibit 3, discharge summary from the referral hospital as p exhibit 1 and CT scan report as exhibit 2.

On cross examination, he stated that the patient went on 19/11/2022 for filling of P3. That he was admitted at the referral hospital. That he went to the surgeon department and that the discharge was on 14/12/2022. That the first admission was on 23/11/2022 and discharged on 26/11/2022 then there was readmission until 14/12/2022. That the discharge summary is prepared first before the receipt is issued. That the receipt may have a different date depending on when the patient made the payment.

11. After the prosecution closed its case, the trial court found that the prosecution had made out a prima facie case against the Appellant and who was subsequently put on his defence. He opted to tender sworn evidence and call three witnesses.
12. DW1 Joshua Omollo Juma testified that he's a farmer and a resident of Oseno village. That on 10/10/2022 he left home to Asembo for work. That he stayed there until January 2023. That the Assistant chief of Osire area where he was working went and took him to the road. Then he was later arraigned in court. That the treatment notes have no rubber stamp, that the doctor denied that the patient was treated at Siaya Hospital. There are no medical records showing that surgery was done on the complainant. That the blood-stained clothes were not produced in court,. He urged the court to dismiss the case.

On cross examination, he stated that he stays in Osire sub location in Oseno village. That he left the village on 10/10/2022 and went to Asembo at Rabungu area. That the complainant is his neighbor and that he did not run away from his village.

13. DW2 Jared Odhiambo Odhiambo testified that he is a resident of Osire village and that the appellant is his neighbor and did not know the case he was facing. That on 5/11/2022 he went with him to work at Rabungu to do fencing work. That they were there until 20/11/2022 and they parted ways.
14. DW3 Elsie Achieng testified that the appellant is her husband and she knows the assault case he was facing. That on 18/11/2022 at 8.00am she had gone to the shamba to weed when two people Milton and another came to her home while holding a panga and a rake. That they were repairing the fence. That she left the farm at 9.00am. That at around 2.00pm she went back to the farm and the two were not there. That her husband had gone to Rabungu.
15. DW4 Festo Aketch Adede testified that she was a resident of Rabungu and that he knows the appellant as his brother's son. That he recalled on 25/1/2023 at 7.00Am he was in his house while the appellant was in the house of his son. That his door was open and he saw people walking outside. That it was the Assistant chief, the appellant and another person not known to him. That the Assistant chief informed him that he had arrested the appellant.
16. The appeal was canvassed by way of written submissions.
17. The Appellant submitted that the evidence of the complainant was inconsistent. That the blood stained clothes were not produced as evidence in court. That the medical evidence was contradictory as



- there was nothing to show that surgery was done. That no prosecution witness proved to court that the appellant attacked the complainant. That the court erred in admitting the evidence of Benson Wanjala who failed to identify the appellant and referred to him as Omondi Juma.
18. The Respondent submitted that they have proved their case beyond reasonable doubt. Further, they submitted that the sentence meted was neither illegal nor unlawful thus the court should not interfere with it.
  19. I have considered the proceedings at the trial court, submissions by both parties and the authorities cited. I find the issues for determination are firstly, whether the prosecution proved their case beyond reasonable doubt and secondly, whether the sentence meted out was manifestly excessive in the circumstances.
  20. The Appellant was charged with an offence of grievous harm contrary to section 234 of the [Penal Code](#) which stipulates that any person who unlawfully does grievous harm to another is guilty of a felony and is liable to imprisonment for life.
  21. The definition of grievous harm is found in section 4 of the [Penal Code](#) Chapter which provides as follows:

“Grievous harm means any harm which amounts to maim or dangerous harm or seriously and permanently injures health, or which is likely so to injure health, or which extends to the permanent disfigurement, or to any permanent or serious injury to any external or internal organ, membrane or sense.”
  22. The clinical officer (PW5) testified and described the examination of the complainant and the injuries sustained as follows“...That upon examination, he had severe bleeding at the right frontal region which made the patient to be confused. The age of injuries were hours and the weapon used was blunt object. The degree of injury was classified as grievous harm”. Whether or not grievous harm or any other form of harm is disclosed must be a matter for the court to find from the evidence led and guided by the definition in the Act. A court will be assisted by medical evidence given in arriving at a conclusion on the nature and classification of the injury. In many cases the courts have accepted and gone by the findings and opinions of the medical experts. But, in appropriate circumstances, the court is at liberty to form its own opinion, having regard to the evidence before it as to the nature and classification of the injury. In the instant case, I have carefully considered the medical evidence and the findings made by the Clinical Officer both in the P3 form and in the evidence in court. I have also carefully considered the definition of grievous harm as contained, not only in the [Penal Code](#) but also in the P3 form. I am satisfied that the complainant's injury amounted to grievous harm as defined in the [Penal Code](#). The definition contains several ingredients of what constitutes grievous harm. I am of the humble opinion that the presence of any one of these ingredients would suffice to disclose grievous harm. I find that the complainant's injury did amount to grievous harm as classified by the medical expert. The evidence of the complainant and the clinical officer confirmed that the complainant sustained serious injuries as he had to be attended to in several hospitals and had to undergo surgery. I find that the prosecution proved this essential ingredient beyond any reasonable doubt. Hence, I am unable to agree with the Appellant assertions that the evidence presented fell short of proving grievous harm. This ground of appeal accordingly fails.
  23. The Appellant has contended that his constitutional rights were violated by the court in not allowing his witnesses to testify. From the trial court proceedings, it is noted that four defense witnesses testified and that the Appellant informed the court that he had closed his case. It is clear that he did present his



witnesses and that there was no violation of his constitutional rights under article 50 of *the constitution* and hence this ground of appeal must fail.

24. As regards the issue of the identity of the perpetrator, the Appellant contends that none of the prosecution witnesses proved to have seen him attack the complainant. The evidence presented by the prosecution witness (PW2) confirmed that indeed he was the eye witness to the incident when he testified thus: “he stayed in Maranda and he was working for the complainant. He recalled on 18/11/2022 at 6.00pm he was at the complainant’s homestead when he came and called him to show him other places on the land that needed slashing. Then the complainant asked him to walk around the land then inform him on the amount of slashing required; so he left him at a particular spot on the land and he went round. Later, he heard screams, he ran back to where he had left the complainant and saw the accused assaulting the complainant with a piece of wood.”

The evidence of the said eye witness clearly placed the Appellant at the scene of crime as the assailant. The incident took place in broad daylight and thus there was no issue of mistaken identity. It transpired from the evidence that there was no grudge between the Appellant and the witness to suggest fabrication of evidence against him. Again, the Appellant has claimed that the names ascribed to him do not belong to him. Whereas a person can go by one or more names, I find that the issue of his physical identity to anyone who knows that person does not arise at all. PW2 stated that he had known the Appellant as they hail from the same area and that they work together during ploughing of farms using oxen. The witness further confirmed that he saw him assaulting the complainant on the material date. I am satisfied that the Respondent proved the identity of the Appellant as the assailant beyond any doubt. It also transpired from the evidence that the complainant and Appellant shared a boundary and that the Appellant had earlier been ordered by the Assistant Chief to replace a tree that he had cut on the side of the complainant by planting a new one. This was the motive behind the attack on the complainant by the Appellant.

25. The Appellant has also faulted the trial court for allowing the medical report to be presented by a medic who was not its author. The record bears witness that the appellant did not object to PW5 producing the medical documents on behalf of his colleague who had worked with him for three years but who no longer worked there. The witness was quite familiar with the handwriting and signatures of his colleague. No prejudice was suffered by the Appellant as he had the opportunity to cross-examine the witness over the said documents and that he cross-examined him at length. This ground of appeal therefore fails.
26. Looking at the Appellant’s defence, the same did not shake that of the prosecution which was overwhelming against him. Hence, from the totality of the evidence tendered, I find that the finding on conviction by the trial court was quite sound and must be upheld.
27. On the issue of sentencing, the same is usually the discretion of the trial court and that the appellate court would hesitate to interfere with the same unless the sentence meted is illegal or unlawful. (See *Wanjema vs. Republic* [1971] EA 493).

Section 234 of the *Penal Code* stipulates that any person who unlawfully does grievous harm to another is guilty of a felony and is liable to imprisonment for life. The trial court gave a sentence of three years’ imprisonment. This is in my view very low, lenient and a slap on the wrist going by the injuries sustained by the complainant. I find the sentence is neither harsh nor excessive to warrant an interference. I uphold the same.

28. The upshot of the foregoing observations is that the Appellant’s appeal lacks merit. The same is dismissed. The conviction and sentence by the trial court is upheld.

Orders accordingly.



**DATED AND DELIVERED AT SIAYA THIS 14<sup>TH</sup> DAY OF FEBRUARY 2025.**

**D. KEMEI**

**JUDGE**

In the presence of:

Joshua Omolo Juma.....Appellant

M/s Kerubo.....for Respondent

Ogendo.....Court Assistant

