



**Ntonjira v Republic (Criminal Appeal E123 of 2024)
[2025] KEHC 1848 (KLR) (11 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 1848 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL E123 OF 2024
DR KAVEDZA, J
FEBRUARY 11, 2025**

BETWEEN

PIUS MWETERU NTONJIRA APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal against the original conviction and sentence delivered on
17th October 2024 by Hon. Kabuna I.M (S.P.M) at Kibera Chief Magistrate's
Court Criminal Case no. E764 of 2023 Republic vs Pius Mweteru Ntonjira)*

JUDGMENT

1. The appellant Pius Mweteru Ntonjira was charged and after a full trial convicted for the offence of grievous harm contrary to section 234 of the *Penal Code*. He was sentenced to serve four (4) years imprisonment. Being aggrieved, he filed an appeal challenging his conviction and sentence.
2. In the petition of appeal and amended grounds of appeal, he raised the following main grounds: The appellant challenged the totality of the prosecution's evidence against which he was convicted; he challenged the sentence imposed as being excessive and urged the court to quash his conviction and set aside the sentence.
3. This is the first appellate court and in *Okeno v. R* [1972] EA 32, the Court of Appeal for East Africa laid down what the duty of the first appellate court is. It is to analyse and re-evaluate the evidence that was before the trial court, and itself come to its own conclusions on that evidence without overlooking the conclusions of the trial court but bearing in mind that it never saw the witnesses testify.
4. The prosecution called upon six witnesses in support of their case. PW2, Victor Ayodi, testified that on the material day at 6 pm while moving the appellant's items from a shed referred to as Grade B shed 1 and 2, he was punched in the head by the appellant's friend. The blow left him dizzy, and he fell. The appellant then arrived armed with a knife. PW1's friend, Edwin, attempted to restrain him, but



during the struggle, the knife broke and cut Edwin's hand. Edwin fled, and soon after, the appellant struck PW2 on the head, causing him to lose consciousness.

5. When PW2 regained consciousness, a Good Samaritan drove him home, where he took painkillers and rested. He later sought treatment at Mbagathi Hospital, where a CT scan revealed a blood clot in his brain. He was referred to Kenyatta National Hospital, underwent surgery on 11th February 2022, and was hospitalized for two weeks. The prosecution presented his treatment notes and CT scan results as evidence. After his discharge, PW2 reported the matter to High Rise Police Station on 4th April 2023, leading to the appellant's arrest.
6. PW3, Edwin Mosoke, corroborated PW2's testimony. PW4, Walter Hongo, stated that the complainant was his neighbour and had been entrusted with managing his shed at the market. The day after assigning the shed to PW2, he learned that the appellant had assaulted him and damaged his cupboard. Upon returning to Nairobi on 7th January 2022, he reported the damage to the chief's office. He also observed that PW2 was unwell and had a visible head scar.
7. PW1, Dr. Kamau Mariga, a police surgeon, produced PW2's P3 form in court. He confirmed that PW2 had suffered a brain blood clot and head injuries but noted that the injuries were caused by a blunt object rather than a sharp weapon. The P3 form was filled out three months after the incident, and he clarified that the injury's age is calculated from the day it occurred. He also confirmed that PW2 was not intoxicated when he examined him.
8. PW5, PC Joshua Mosoti, took over the case on 5th April 2022, recorded PW2's statement, visited the scene, and arrested the appellant, though the weapon was not recovered. PW6, Matuni Marvin, presented Mbagathi Hospital's treatment notes, which the court admitted despite being prepared by an intern. The trial court admitted this evidence, which indicated that PW2 was intoxicated during his medical examination.
9. In his defence, DW1, the appellant, stated that on the day of the incident at 6 pm, while at work, goons forcibly evicted him from his shed, claiming he had occupied it unlawfully. The complainant was armed with a panga, and after a fracas, calm was restored. He reported the matter at High Rise Police Station and produced an OB extract in court. He argued that if he had assaulted the complainant, the public would have lynched him since the market was crowded. Under cross-examination, he maintained his innocence and claimed he was coerced into signing his statement at the police station.
10. DW2, Dennis Karimi, testified that the complainant and four others took some of the appellant's items, prompting him to call the appellant. The appellant arrived with his goon to confront them. PW2 then allegedly drew a panga and aimed at the appellant's head, leading the public to intervene and beat PW2 to defend the appellant. Order was later restored.
11. DW3, Kelvin Irungu, corroborated DW1 and DW2's testimonies. DW4, Ambrose Mwingi, stated that PW2 and three men approached him twice, seeking the appellant. The second time, PW2 was armed with a small axe. Despite DW4's plea for calm, a commotion ensued, causing property damage.
12. The trial court considered the evidence in totality and convicted the appellant.
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 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, PW2 sustained head injuries when the appellant attacked him, leading to the presence of a blood clot in his head. As a result, he had to undergo surgery at Kenyatta National Hospital where he was subsequently admitted for two weeks. These injuries were evidenced by the treatment notes and CT scan produced by the prosecutor, together with the complainant’s P3 form adduced by PW1 the police surgeon, and further corroborated by the eye-witness testimony of PW3 Edwin Mosoke.

16. Section 231(b) of the *Penal Code* on acts intended to cause grievous harm refers to the use of a dangerous or offensive weapon. From the record, PW1 the police surgeon averred that the head injuries sustained by the complainant, resulting in a blood clot in his brain were caused by a blunt object since his skin had not been pierced. This affirms the testimony by both the complainant and PW3 that the appellant used the wooden handle of his knife to hit the complainant’s head severally.

17. 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.

18. In the end, I find that all the ingredients for the offence of grievous harm were proved against the appellant beyond reasonable doubt. The conviction is sustained.

19. On sentence, the appellant was sentenced to serve four (4) years imprisonment. 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.

20. 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.

21. In the end, I find that the appeal is found to be lacking in merit and is dismissed in its entirety.

Orders accordingly.

JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 11TH DAY OF FEBRUARY 2025

D. KAVEDZA

JUDGE

In the presence of:

Mr. Mutuma for the respondent

Mr. Akanga for the appellant

Appellant - present



Achode – court assistant

