



REPUBLIC OF KENYA



KENYA LAW
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**Ramadhan v Rublic (Criminal Appeal 82 of 2022)
[2024] KEHC 4582 (KLR) (6 May 2024) (Judgment)**

Neutral citation: [2024] KEHC 4582 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL 82 OF 2022**

DR KAVEDZA, J

MAY 6, 2024

BETWEEN

ABDUL RARIK RAMADHAN APPELLANT

AND

RUPUBLIC RESPONDENT

*(Being an appeal against the original conviction and sentence delivered by
Hon. Kitagwa (SPM) on 15th December 2022 at Kibera Chief Magistrates
Court Criminal Case No. 322 of 2019 Republic vs Abdul Ramadhan Riziki)*

JUDGMENT

1. The appellant was charged and after a full trial convicted for the offence of assault causing actual bodily harm contrary to section 215 of the *Penal Code*. He was convicted and sentenced to pay a fine of Kshs. 10,000/= in default to serve three (3) months imprisonment.
2. Being aggrieved, he filed an appeal challenging his conviction and sentence. In summary, he challenged the totality of the prosecution's evidence against which he was convicted.
3. In his Memorandum of Appeal dated 5th January 2023, the Appellant has raised seven grounds of appeal. In a condensed form, he challenged the totality of the prosecution's evidence against which he was convicted. He further contended that the trial magistrate erred by failing to rightly assess his defence.
4. As this is a first appeal, I am required to conduct a fresh evaluation of all the evidence and come to an independent conclusion as to whether or not to uphold the conviction and sentence. 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 in this regard called two witnesses to prove their case. The complainant, Ali Ramadhan Riziki (PW1), recounted to the court that on October 25, 2019, while at Kibera mosque, he was in the process of putting on his shoes when his younger brother, the appellant, approached him with a paper, alleging it was from the chief. Declining the paper and informing the appellant that his case was under the jurisdiction of the District Officer, PW1 explained that they were embroiled in a dispute over a house. Attempting to enter the mosque, PW1 found his path blocked by the appellant.
6. When questioned about the obstruction, PW1 was met with physical aggression as the appellant struck him forcefully with a fist on his left cheek. Sustaining injuries to his left jaw, PW1 sought medical treatment at St. Mary's Kibera. During cross-examination, PW1 disclosed that the blow resulted in broken teeth. Subsequently, he reported the assault to the Independent Policing Oversight Authority (IPOA), identifying the appellant as both his brother and the officer who had assaulted him. The complainant,
7. No. 245611, PC. Woman Miriam Mwendé for Kilimani Police station (PW2) testified that the complainant reported having been assaulted by his younger since they had family feuds. The complainant later reported to the D.O. who advised that he report the matter to the police station, which he did. PW2 presented the P3 form filed by the now-deceased Dr. Maundu. The injuries documented on the form for the complainant, who had been assaulted, included a swollen jaw and a bleeding gum. The degree was indicated as harm.
8. After considering the grounds of appeal, submissions on record, and the evidence adduced in the trial Court, I find that the main issue is whether the appellant was rightly convicted for the offence of assault causing actual bodily harm.
9. According to Section 251 of the *Penal Code*: -

“Any person who commits an assault occasioning actual bodily harm is guilty of a misdemeanour and is liable to imprisonment for five years.”
10. The essential elements of the offence of assault causing actual bodily harm are;
 - i. Assaulting the complainant or victim
 - ii. Occasioning actual bodily harm
11. I have evaluated the evidence adduced by the prosecution witnesses. The evidence of assault on PW1 is corroborated by the P3 form filled by the now-deceased Dr. Maundu, which documented injuries, including a swollen jaw and a bleeding gum, consistent with an assault. The record also indicates that the injuries were classified as harm.
12. From the testimony of PW1, the incident happened in broad daylight at a mosque. PW1 in cross-examination mentioned that he was with one, Father Harum, when the appellant confronted him. However, the said father Harum was never called to corroborate the testimony of PW1 on being assaulted. Suffice to note that while the appellant in his defence alluded to the fact that indeed there was a commotion between him and PW1, this does not conclusively prove that he assaulted PW1. Besides, the burden is on the prosecution to prove the assault.



13. Corroboration of evidence is necessary in criminal cases. The meaning of corroboration as defined or stated in the Nigerian case of *Igbine vs. The State* {1997} 9 NWLR (Pt.519) 101 (a), 108 is thus: -

“Corroboration means confirmation, ratification, verification or validation of existing evidence coming from another independent witness or witnesses”.
14. In *Mukungu vs. Republic* [2002] 2 EA 482, the Court of Appeal citing *Mutonyi vs. Republic* [1982] KLR 2003, held that:

“An important element in the definition of corroboration is that it affects the accused by connecting him or tending to connect him with the crime, confirming in some material particular not only the evidence that the crime has been committed but also that the accused committed it: See *Republic vs. Manilal Ishwerlal Purohit* [1942] 9 EACA 58, 61.”
15. It is therefore clear that corroborative evidence or material ought to confirm, ratify, verify, or validate the existing evidence and must emanate from another independent witness or witnesses. It must affect the accused by connecting him or tending to connect him with the crime, confirming in some material particular not only the evidence that the crime has been committed but also that the accused committed it.
16. In this case, the only evidence corroborating the complainant’s evidence on assault causing actual bodily harm, was the medical evidence. The P3 on record, confirmed that the complainant had injuries on the maxillary region, with a broken upper molar and ulceration on the maxillary mucosa. The injuries were confirmed as harm. This testimony was consistent with the testimony of PW1 on the injuries caused by the appellant. It is my finding that such evidence was conclusive for the offence committed.
17. It is my finding that the evidence in this case passed the decisive test of corroboration. The appellant was therefore properly convicted.
18. On sentence, the appellant was sentenced to pay a fine on Kshs. 10,000/= in default to serve three (3) months imprisonment. It is my finding that the sentence is reasonable considering the circumstances of the case. The upshot of the above is that the appeal is found to be lacking in merit and is dismissed.
19. As I conclude, while this court has sustained the appellant’s conviction and sentence, it is imperative to recognize that familial harmony and reconciliation hold profound significance, especially when conflicts arise within the bonds of kinship. As brothers sharing common familial ties, both the appellant and the complainant are urged to reflect on the values of unity, understanding, and forgiveness. In the spirit of fostering peace and amity within the family, I encourage both parties to consider alternative dispute-resolution mechanisms. By engaging in constructive conversations and seeking mutually acceptable resolutions, they can pave the way for healing and restoration of their relationship.
20. Furthermore, it is imperative to acknowledge that conflicts, though inevitable, need not define the trajectory of familial relationships. Suffice to note that the true measure of strength lies not in the absence of conflicts but in the courage to confront them with grace and compassion. May the appellant and the complainant embark on this journey with open hearts and a commitment to building a more harmonious future for themselves and their family.

Orders accordingly.

JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 6TH DAY OF MAY 2024



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D. KAVEDZA

JUDGE

In the presence of:

Ms. Gladys Omurokha for the respondent

Appellant present on the virtual platform

Naomi Court Assistant

