



REPUBLIC OF KENYA



**KENYA LAW**  
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**Rotich v Republic (Criminal Appeal E015 of 2021)  
[2023] KEHC 17600 (KLR) (9 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 17600 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAPSABET  
CRIMINAL APPEAL E015 OF 2021**

**JR KARANJA, J**

**MAY 9, 2023**

**BETWEEN**

**JOHN CHERUIYOT ROTICH ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**JUDGMENT**

1. John Cheruiyot Rotich, the appellant, appeared before the Senior Principal Magistrate at Kapsabet facing a charge of grievous harm contrary to section 234 of the *Penal Code*, in that on the February 9, 2016 at Mosombor, Nandi County unlawfully assaulted Barnaba Kipkorir Rotich with a jembe thereby occasioning him grievous harm.
2. Upon his plea of not guilty, the appellant was tried, convicted and sentenced to life imprisonment. Being aggrieved by the conviction and sentence, the appellant preferred the present appeal on the basis of the grounds contained in the petition of appeal filed herein on September 17, 2018 as amended in the year 2020, in which he essentially complains of having been convicted on the basis of evidence which was insufficient and contradictory. He also complains that the sentence meted out against him was harsh and excessive.
3. At the hearing of the appeal as argued by way of written submissions, the appellant appeared in person while the office of the Director of Public Prosecution (DPP) appeared for the republic/respondent through the learned Senior Principal Prosecution Counsel, M/s Brenda Oduor Bengo who opposed the appeal and contended that the appellant was lawfully and properly convicted and that the sentence imposed upon him was lawful and commensurate to the circumstances and magnitude of the offence. The learned prosecution Counsel, urged this court to dismiss the appeal.



4. Upon due consideration of the appeal on the basis of the supporting grounds and in the light of the viral submissions, the duty of this court was to revisit the evidence and draw its own conclusion bearing in mind that the trial court had the opportunity of seeing and hearing the witnesses.
5. Briefly, the prosecution case was that the complainant, Barnabas Kipkorir Rotich (PW1) and the appellant are brothers. On the material February 9, 2016, both were at home when the appellant attacked and hit the complainant with a hoe (jembe) over an issue related to money for which the appellant was previously suspected of being unwell by the complainant. The attack resulted in the complainant suffering serious injuries which were classified as grievous harm in the medical report (P.Ex 1) prepared and signed by Joan Kitur (PW5) a clinical officer based at Kaptumo.
6. A neighbour, Benard Koros (PW2), was attracted to the scene by distress calls and on arriving there found the complainant on the ground having been hit by the appellant with a jembe. The father of both the complainant and the appellant, Daniel Samoei (PW3) was at a river when he heard shouting of the complainant saying that he was being killed by the appellant. He (PW3) rushed to the scene and found the complainant on the ground already injured. He rushed the complainant to the hospital with the help of others including Jones Kiprono Mbiki (PW4).
7. After being reported to the police, the matter was investigated by among others, PC Moses Kamori (PW6) after which the appellant was charged with the present offence. His defence was a denial and a contention that he never assaulted his brother, the complainant.
8. The trial court considered the evidence in its totality and arrived at the conclusion that the prosecution case was proved beyond reasonable doubt. In this court's opinion, the basic issue which arose for determination was whether the complainant suffered grievous harm as a result of a criminal act of assault being committed against him and if so, whether the appellant was responsible for the unlawful act.
9. Although the appellant denied the offence and maintained that he did not assault the complainant, the evidence adduced against him by the complainant, (PW1) as corroborated by that of his neighbours, Koros (PW2) and Kiprono, (PW4) as well as his father, Samoei (PW3) credibly indicated that he was the actual offender. He assaulted the complainant in broad daylight and was found at the scene immediately after the fact. The medical evidence by the clinical officer (PW5) clearly established that the complainant suffered grievous harm.
10. All in all, the prosecution evidence against the appellant was overwhelming and credible enough for the trial court to rely on and convict the appellant. It is therefore the finding of this court that the conviction was safe and sound and is hereby upheld.
11. With regard to the sentence of imprisonment for life, it was lawful inasmuch as it is prescribed in section 234 of the Penal Code as the maximum sentence.

However, considering that the offender was a first offender and that the offence occurred in a family set up involving two siblings, the sentence was rather overly harsh and excessive even if intended to have a deterred effect and is hereby set aside and substituted for imprisonment for a period of ten (10) years.

Other than the alteration in sentence, the appeal is dismissed.

**(DELIVERED, DATED AND SIGNED AT KAPSABET THIS 9<sup>TH</sup> DAY OF MAY, 2023.)**

**J.R. KARANJAH**

**JUDGE**

