



REPUBLIC OF KENYA



**KENYA LAW**

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**Republic v Ofula (Criminal Case E564 of 2023)  
[2025] KEMC 244 (KLR) (13 June 2025) (Judgment)**

Neutral citation: [2025] KEMC 244 (KLR)

**REPUBLIC OF KENYA  
IN THE SIAYA LAW COURTS  
CRIMINAL CASE E564 OF 2023**

**JP MKALA, RM**

**JUNE 13, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**SAMUEL OFULA ..... ACCUSED**

**JUDGMENT**

1. The accused is charged with the offence of grievous harm contrary to Section 234 of the [Penal Code](#). Particulars are that on the 23<sup>rd</sup> day of April, 2023 at Mur malanga sub location in Siaya sub County within Siaya County unlawfully did grievous harm to Georga Ofula.
2. The accused persons denied the charges and a plea of not guilty was entered. Matter proceeded for hearing after close of the prosecution case, the accused was put on his defence.

**Prosecution case**

3. The prosecution called five witnesses to prove their case.
4. The prosecution alleges that on the material date the complainant visited his farm and upon arrival he found two individual burning charcoal after cutting down his trees. He asked them why they had cut his tree and who gave them the authority to burn charcoal in his land. Mr. Owino ran away while the accused person retreated to his home and came back with a panga.
5. The accused person charged at the complainant and threw the panga at him. That the accused target was to cut the complainant's neck, however, the complainant blocked the panga using his forearm thereby sustaining serious injuries. Thereafter the accused person was arrested by members of the public and taken to Ting'wani police post.



6. At the police station, the complainant is said to have called his elder brother who informed him not to take the Accused person to prison but he would be coming to resolve the matter as siblings. Further, the accused had agreed to pay the treatment costs. That since the accused person was intoxicated, he was taken to his brother's house near the police post to sleep in Ting'wangi.

The prosecution produced: -

- A panga as exhibit 1
- Treatment notes exhibit 2
- P3 form as exhibit 3

### **Defence case**

7. Two witnesses testified for the Defence case
8. The accused person testified that on 23/4/2023 he came from his farm and found three people at his home one of which was the complainant who is well known to him. He claims that the people were carrying a panga. He cried to George for sympathy to no avail. They took him to George's house where a fourth person emerged from the house, they sat him down and started torturing him.
9. They then took him inside a saloon car and took him round, their intention was to kill him. That they took him to a river, they wanted to throw him into the river, he screamed and they took him back to the car. In the car George gave him a notebook to sign that he will never say anything about the land.
10. He further states that the complainant spoke to his brother at length then handed him the phone to speak to him. The brother told him that he had warned him severally to leave alone the children. He told the brother, one Abdalla that he had done nothing, he was forcefully arrested.
11. He was then taken to Ting'wangi police post and George filed a report. After explaining himself to the police they decided to release him because of the injuries he had sustained in the hands of the complainant and that the police feared that he would die in their cell so they took him to his brother's house nearby.
12. The following day he went to Bar Okang police post and reported and was given P3 form which was duly filled and the complainant was charged before court.

The defence produced the following exhibits.

- Chief's letter dated 21/9/2024- exhibit 1
13. A letter dated 20/12/2023 from ward Agricultural officer South East Alego Ward-exhibit 2

### **Analysis and determination**

14. The accused was charged with the offence grievous harm contrary to section 234 of the [\*Penal Code\*](#).  
234. Grievous harm  
Any person who unlawfully does grievous harm to another is guilty of a felony and is liable to imprisonment for life.
15. The issue for determination is whether the prosecution proved their case beyond reasonable doubt.



Section 4 of the [Penal Code](#) defines harm as follows: -

“means any bodily hurt, disease or disorder whether permanent or temporary;”

16. The same section further defines the term maim as the destruction or permanent disabling of any external or internal organ, member or sense.
17. For the offence to be proved the state must prove some very crucial elements of the offence. These elements were discussed in the case of *Ndung'u v Republic (Criminal Appeal E002 of 2022) [2023] KEHC 1518 (KLR) (1 March 2023) (Judgment)*

The Appellant was charged with the offence of grievous harm contrary to Section 234 of the [Penal Code](#), which is the punishment section. The charge sheet should have indicated Section 231 as read with Section 234 of the [Penal Code](#). To secure a conviction under the offence of grievous harm, the prosecution had to prove the following essential elements beyond reasonable doubt:-The victim sustained grievous harm.That the harm was caused unlawfully.That the accused caused or participated in causing the grievous harm.

The good Judge further stated in the above case: -

Therefore, the specificities of "grievous harm" are:-

"In the case of grievous harm, the injury to health must be permanent or likely to be permanent, whereas, to amount to bodily harm, the injury to health need not be permanent; a mental injury may amount to grievous harm but not to bodily harm; the injury must be "of such a nature as to cause or be likely to cause" permanent injury to health."

18. The prosecution stated that the complainant was cut by the accused person thus causing him grievous harm.

Section 231 (a) of the [Penal Code](#) provides: -

19. Any person who, with intent to maim, disfigure or disable any person, or to do some grievous harm to any person, or to resist or prevent the lawful arrest or detention of any person—
  - a. unlawfully wounds or does any grievous harm to any person by any means whatever is guilty of a felony and is liable to imprisonment for life.
20. The question is whether the prosecution has proved all the elements of the offence of grievous harm.

#### **The victim sustained grievous harm**

21. PW1 testified that he saw the accused person cutting the complainant with a panga. That panga was produced before court as PEX-1. PW2 who is the complainant testified that he was cut and injured by the accused person. This court noted a huge scar on the complainant forearm which is now deformed. According to PW5 who is the doctor who attended to the complainant, the complainant's upper limb was held in flex position. The elbow movement was reduced including the finger of the left hand and sensation was reduced on the wrist and palm. He stated that the probable cause of injuries was a sharp object.
22. These injuries are further supported by the P3 form produced as exhibits and the treatment notes from Siaya Referral Hospital.



23. From the above evidence, it is apparent that the complainant sustained grievous harm.

**That the harm was caused unlawfully.**

24. The accused person claims that he did not assault the complainant and neither did he cut him with a panga. He claims that it was in fact the complainant who took him from his house to his house, tortured him and later took him to Tingwangi police post.
25. PW1 states that he saw the accused person throwing a panga at the complainant who blocked it using his forearm thereby cutting him. PW2 testified that the accused cut him when he asked him who had given him authority to cut his trees and burn charcoal in his farm.
26. Further, PW3 testified that he had gone to buy charcoal, he heard people arguing, he heard the complainant asking the accused person why he wanted to kill him in his own land. He saw the accused person carrying a panga and wanted to cut the complainant on the head but the complainant blocked it with his arm.
27. The accused person has produced agricultural crop assessment report where he claims that the complainant had destroyed his crops. Further, he tells this court that the complainant forced him to sign a notebook promising not to say anything about land. He further stated that he spoke to the complainant's brother by the name Abdalla who told him he had been warning him to leave alone the children.
28. From the accused person's evidence, it is clear that there is a simmering land dispute between himself and the complainant. A land ownership dispute is not a ticket for anyone to take matters into their own hands and assault, beat, or maim the other person. There are better and legal ways of solving land disputes other than violence and unorthodox means.
29. I therefore find that the attack and assault by the accused person was unwarranted, unlawful and/or without any legal excuse.

**That the accused caused or participated in causing the grievous harm**

30. As discussed in the second element hereinabove, the accused person had the motive/reason to attack the complainant, which he did. This is confirmed by the evidence of PW1 and PW3. They saw him attack and cut/injure the complainant.
31. This court does not believe and/or trust the evidence by the defense that the accused person did not attack the complainant. DW1 confirms that he spoke to the complainant's brother at the police station, PW2 testified that he spoke to his brother who advised him not to take any legal action against the accused since they are siblings and that they would mediate the situation.
32. PW4 stated that the accused was escorted to his brother's house after the complainant decided not to press any charges and that they would resolve the issue at home. DW2 confirms that the accused person was brought to his home by the police officers.
33. If the accused claims to have been assaulted by the complainant and that he was released by the police due to the serious injuries he sustained as a result of torture he undergone in the hands of the complainant and his accomplices, why did he not lodge a complainant at the said police station and rather opted to report the issue at Bar Okang police post?
34. It is my finding that the accused evidence is a sham and lacks no basis or any iota of truth.
35. It is clear to this court that the prosecution has proved this element to the required standard.



**Conclusion and determination**

36. After considering the evidence by the prosecution visa viz that of the defence, it is my finding that the prosecution has discharged their burden of proving this case beyond reasonable doubt.
37. The upshot of this is that the accused is found guilty and is hereby convicted under section 215 of the *Criminal Procedure Code*.

**DATED AND DELIVERED IN OPEN COURT AT SIAYA THIS 13<sup>TH</sup> DAY OF JUNE, 2025.**

**J. P. MKALA**

**RESIDENT MAGISTRATE**

Delivered in the presence of:-

Ms. Kauma for state

Accused- Present

C/A Okumu

