



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Republic v Galole (Criminal Case E011 of 2025)
[2025] KEMC 208 (KLR) (18 August 2025) (Judgment)**

Neutral citation: [2025] KEMC 208 (KLR)

**REPUBLIC OF KENYA
IN THE LAMU LAW COURTS
CRIMINAL CASE E011 OF 2025
FM MULAMA, RM
AUGUST 18, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

HAJI GALOLE ACCUSED

JUDGMENT

A. Introduction.

1. The accused is charged with grievous harm contrary to section 234 of the penal code. The particulars were that on 27/3/2025 at around 1600Hours at Patte Location in Lamu the accused cut one Omar Wanje on the right shoulder using a panga inflicting deep cut wound thereby causing him grievous harm.
2. The prosecution marshalled a total of 6 witnesses to prove the charge against the accused person whereas on the other hand the accused gave sworn evidence and never called any witness.
3. I have considered the testimonies of the accused and the state as well as the exhibits produced.

Prosecution's case.

4. It is the prosecution's case that on the material date at around 4pm the complainant while at work Abel Pw 3 informed him that the accused was at his home with the intention of cutting down a coconut tree. Pw 1 and Steven Chome(Pw 2) rushed home and upon arrival and when the accused saw them he escaped and they went back to their work place. Moments later and after they had returned back to work, Pw 3 called him again informing him that the accused had returned and Pw 1 and 2 again rushed home and found the accused and asked him to him but he refused and instead flashed out a panga and cut him on the right shoulder.



5. A motor cycle was then called and the complainant was rushed to hospital where he was admitted and later discharged. It was his testimony that as a result of the injury he cannot work as he used to. He identified the P3 and the treatment notes. He was not cross examined.
6. Pw 2 and 3 corroborated the evidence of Pw 1 and Pw 2 confirmed that he is the one who organized and took the complainant to hospital after he was attacked with a panga by the accused.
7. Pw 5 Dr. Athman Aboud Athman confirmed that the injury was on the complainant's right shoulder and was caused by a panga and since it was a deep cut wound, stitching was done and drugs administered.
8. He further noted that the cut wound was 15centimeter by 2centimeter deep and as per the P3 the injury was assessed as grievous harm. He was not cross examined.

Defence case

9. The accused in his defence gave sworn evidence and stated that on the material day he had gone to herd animals and on his way back at 5pm he passed by Neema's home and soon 6 people came with wooden sticks and machetes and attacked him but he managed to escape and reported the matter to the chief and later travelled to Hindi where he was arrested by KDF officers and transported back to Patte. He denied any involvement with the offence facing him.

B. Issue For Determination.

10. Whether the prosecution have proved the charge of grievous harm against the accused person.

C. Analysis And Determination.

11. For the accused to be convicted of the offence of doing grievous harm contrary to section 234 of The Penal Code, the prosecution has to prove each of the following essential ingredients beyond reasonable doubt;
 - a. The victim sustained grievous harm.
 - b. The harm was caused unlawfully.
 - c. The accused caused or participated in causing the grievous harm.
12. Concerning the first element, bodily "harm" means any bodily hurt, disease or disorder whether permanent or temporary. The nature of grievous harm is defined by section 4 of The Penal Code as 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 to a permanent or serious injury to any external or internal organ, membrane or sense.
13. The court in the case of Pius Mutua Mbuvi v Republic [2021] eKLR held that;

"The specificities of "grievous harm" therefore are; (1) 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 (2) a mental injury may amount to grievous harm but not to bodily harm (3) the injury must be "of such a nature as to cause or be likely to cause" permanent injury to health."



14. Pw 1 testified how the accused attacked him with a panga on his right shoulder when he asked for a second time why he wanted to cut his coconut tree and the accused responded by cutting him with a panga on the right shoulder. A fact proved and witnessed by Pw 2 and 3 who were at the scene.
15. Pw 2 then organized and took Pw 1 to hospital where he was treated by stitching and later discharged. It was the evidence of Pw5 that the complainant sustained a 15cm by 2cm deep cut and in the assessment that was a grievous harm that the complainant suffered. The accused did not challenge this finding by the medical doctor. I therefore find and hold that indeed the complainant sustained grievous harm
16. The second element is that the harm was unlawful. This means that the injury was caused without any lawful justification or excuse. From the evidence on record, the accused had all intentions of stealing coconut fruits by cutting the tree but was stopped by Pw3 who went to call Pw 1 and 2.
17. The accused had no claim on any of those coconut fruits or trees and he had no reason to harvest them forcefully and when he was stopped he decided to attack the complainant in the manner he did. He caused an unlawful harm on the complainant for no apparent reason. The 2nd element is similarly proved.
18. The third element is whether the accused participated in causing the grievous harm. Pw 1, 2 and 3 in their testimonies have explained in details how the accused attacked the complainant. It was further their testimony that they did not see the accused once but twice. The first time when he saw them he escaped and on the second time when they met again that is when he removed the panga and attacked the complainant.
19. The incident is said to have happened at around 1600hours and outside and as such I am satisfied that the conditions were such that the accused was properly identified by Pw 1, 2 and 3 and who confirmed to be the accused in the dock when they gave their respective testimonies and as such I am convinced that it is the accused who caused the grievous harm.
20. The accused did very little to challenge the evidence by the state and the same was not shaken even in cross examination. In a desperate attempt to avoid liability he tried to absent himself from the scene and indicate that he was at Neema's home. The said Neema was not called as his witness to corroborate his narrative. He also claimed that infact he was the one who was attacked by 6 people while at Neema's home. No reports or medical documents speaking of such an attack were ever produced in court.
21. His defence is purely denial with no corroborative evidence and as such of less or no probative value and I proceed to dismiss the same.

D. Conclusion And Disposition.

22. The upshot of the foregoing is that the prosecution's case is watertight and there exists no doubt that it is indeed the accused who did grievous harm to the complainant.
23. The net effect being that the prosecution proved its case against the accused person and consequently the accused is convicted for the offence of grievous harm contrary to section 234 of the Penal code under section 215 of the CPC.
24. Those shall be the orders of the court.

DATED, SIGNED AND DELIVERED AT LAMU LAW COURTS THIS 18TH DAY OF AUGUST 2025

F.M. MULAMA.



RESIDENT MAGISTRATE

In the presence of:

Ahmed Omar for DPP.

Court Assistant:- Fathiya Loo.

Haji Galole.

