



**Republic v Abdalla (Criminal Case E031 of 2025)
[2025] KEMC 205 (KLR) (7 August 2025) (Judgment)**

Neutral citation: [2025] KEMC 205 (KLR)

**REPUBLIC OF KENYA
IN THE LAMU LAW COURTS
CRIMINAL CASE E031 OF 2025
FM MULAMA, RM
AUGUST 7, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

TWALIB ABDALLA ACCUSED

JUDGMENT

A. Background.

1. Twalib Abdalla is charged with the offence of assault causing actual bodily harm contrary to section 251 of the Penal code.
2. The particulars are that on the 14th day of January 2024 at around 2100hours in Zinji area of Lamu county he assaulted Namir Ali Bashani thereby occasioning him actual bodily harm
3. He pleaded not guilty to the offence and the prosecution called a total of 5 witnesses and upon being found to have a case to answer and consequently placed on his defence, the accused gave sworn testimony and closed its case.

The Prosecution’s case.

4. It is the evidence of Pw 1 the complainant that on the material day and time while heading home he met the accused and his friend and the accused borrowed him Kshs.50 but the complainant was not willing to give him and he continued with his journey home and the accused agitated by that started throwing insults at him but he ignored.
5. As he approached home, he was suddenly attacked with a fimbo and on turning back to see whom had attacked him, he saw the accused and who brandished out a knife and attempted to stab him with the initial one aimed at his right eye but he restrained him but he was not successful as the accused managed



- to stab him and he even showed to court the stab wound. He stated that he bled profusely and his mother saw him bleeding and they reported the matter and later taken to hospital for treatment.
6. Pw 2 the mother of the complainant in her testimony admitted that she didn't witness the incident but was emphatic that he heard some commotion down stairs and when she rushed to see what was happening she found her son bleeding while touching his right eye and also saw the accused running away. The following morning while in hospital, he met the accused person and a scuffle ensued between her and the accused and the accused once again removed a knife and threatened her not to move closer to him again or else she would be the next one.
 7. The doctor confirmed the injuries and indicated that he sustained severe injuries that necessitated his admissions for 2 days and he produced the discharge summary, treatment notes and P3 as evidence.

Defence case

8. In his sworn testimony the accused distanced himself from the events of that day and stated that on the material day he was in Mombasa on fishing activities and came back 3 days later.
9. On cross examination he stated that he went to Mombasa in 2022 and came back in 2023 and admitted to not saying anything or giving evidence on events that happened post 2023 and this particular one.

B. Issue For Determination.

10. This court has identified issues for determination.
 - a. Whether the accused assaulted the complainant.
 - b. Whether the accused occasioned actual bodily harm as a result of the assault.

C. Analysis And Determination.

11. The essential elements of the offence of assault causing actual bodily harm are;
 - a. The accused assaulted the complainant or victim, which
 - b. Occasioned actual bodily harm.
12. An assault is any act by which a person intentionally or recklessly causes another to suffer or apprehend immediate unlawful violence.
13. Of actual bodily harm, or hurt or injury, in *Rex vs Donovan*, Swift J, as quoted with approval in the case of *Vicky Chelangat v Republic* [2022] eKLR stated:-

“For this purpose, we think that "bodily harm" has its ordinary meaning and includes any hurt or injury calculated to interfere with the health or comfort of the complainant. Such hurt or injury need not be permanent, but must, no doubt, be more than merely transient and trifling.”

14. Section 2 of the Penal Code defines harm as follows: -

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

15. I have carefully examined the facts and testimonies of Pw 1,2 and 3 as well as the medical documents produced in evidence. It should be noted that the evidence by all those witnesses was perfectly



corroborated and the accused did very little to challenge them in cross examination in some instances even not cross examining witnesses on their testimonies relating to the incident.

16. By and large the case by the prosecution remain unchallenged and also there is no defence that has been placed forth by the accused as distanced himself from the incident and infact that he wasn't within the jurisdiction of Lamu but he did not call any witness to corroborate his defence.
17. His defence was basically a mere denial and even in cross examination he could not clearly give a clear account of his whereabouts on the particular date or any other date. I thus his defence as of less probative value not capable of displacing the evidence by the state and I consequently dismiss it.
18. On the first issue as to whether the accused assaulted the complainant, I am, convinced that there is in place evidence to demonstrate that the accused was the one who assaulted the complainant.
19. It was the testimony of the accused that on his way from work heading home the accused borrowed him Kshs.50 but despite having it he did not give him and this infuriated the accused who started hurling insults but he ignored the accused and went home and when he was about to get into the house, he was hit by a fimbo and on turning he saw the accused and who brandished a knife and attempted to stab him.
20. I have no doubt in the testimony of the complainant that he was able to identify the accused as the one who assaulted him for the reasons that he saw the accused initially before the attack and after the attack as they struggled. Furthermore, Pw 2 the complainant's mother also confirmed seeing the accused as he ran away from the scene after attacking the complainant.
21. The accused did not deny this or challenge this testimony in cross examination and coupled that the accused's testimony not being believable as he excused himself from the scene, I do find that the evidence on record as to the identity of the accused is cogent enough to convince the court that he is the one who assaulted the complainant.
22. Did the assault on the complainant caused him actual bodily harm? It was the evidence of Pw 1 that as a result of the accused hitting him first with a fimbo and later trying to stab him with a knife and as a result he bled profusely.
23. Pw 3 confirmed the injuries and indicated that the injury was serious that he had to be admitted for 2 days. The injuries that were sustained were assessed as harm in the P3 and I am thus convinced beyond any doubt that the complainant suffered actual bodily harm. This is further confirmed by the photo produced in court as exhibit.
24. These facts, therefore, disclose an offence and supported the charge facing the accused person. The 2 ingredients necessary to prove the offence of assault are thus proved beyond any reasonable doubt.

D. Conclusion And Disposition.

25. It is therefore my finding and I so hold that the prosecution proved beyond reasonable doubt that the accused person herein assaulted the complainant.
26. The net effect being that the accused person is found guilty for the offence of assault causing actual bodily harm contrary to section 251 of the penal code and he is accordingly convicted in that count under section 215 of the CPC.
27. Orders accordingly.

DATED, SIGNED AND DELIVERED AT LAMU LAW COURTS THIS 7TH DAY OF AUGUST 2025



F.M. MULAMA

RESIDENT MAGISTRATE

In the presence of:

Peter Birir for DPP.

Court Assistant:- Fathiya Loo

Twalib Abdalla.

