



**Director of Public Prosecutions v Watakila (Criminal Case
E045 of 2022) [2024] KEMC 73 (KLR) (15 January 2024) (Judgment)**

Neutral citation: [2024] KEMC 73 (KLR)

**REPUBLIC OF KENYA
IN THE KWALE LAW COURTS
CRIMINAL CASE E045 OF 2022
ZK KAGENYO, RM
JANUARY 15, 2024**

BETWEEN

DIRECTOR OF PUBLIC PROSECUTIONS REPUBLIC

AND

ROSE WATAKILA ACCUSED

JUDGMENT

1. The accused person was on the 11th day of February 2022 arraigned to face an indictment of having assaulted another and causing him actual bodily harm said to be contrary to section 251 of the [Penal Code](#). It was said that on the 6th day of January 2022 at Jamila Academy, Jeza ‘B’ village in Golini location, Matuga subcounty in Kwale county within Coast region the accused unlawfully assaulted Daniel Mwanza thereby occasioning her actual bodily harm.
2. The accused denied the charges and a trial ensued. She conducted her case while on a cash bail of Ksh. 15, 000/=. Throughout the trial, the accused person was not represented. At all times of the trial, she was present in court. The matter was conducted in Kiswahili language, or its interpretation, the language of choice by the accused.

The Prosecution’s case

3. According to the prosecution, the complainant is a teacher at the said Jamila Academy and on the eventful day, there was construction work going on within the school which included erecting a gate for the school. While the masons were erecting such gate, the accused appeared before them and interrogated them on why they were encroaching on her land. A confrontation ensued when the complainant came from the office to the locus in quo and the accused hurled a stone at him causing him injuries on his face. The matter was later in the night reported at Kwale Police Station whereat investigations were conducted.



Defence case

4. The accused person was placed on her defence under section 210 of the *Criminal Procedure Code*, and section 211 of the *Criminal Procedure Code* and Article 50 (2) (i) having been explained to the accused person, she, in person, elected to defend herself by way of tendering unsworn evidence without calling any witness.
5. The accused told the court that on the eventful day, there were masons erecting a gate for the school and that she realized that they were encroaching on her land which she advised them to stop. The said masons changed the position they had elected to erect one of the pillars, now to be away from the accused's land and after they did so, she started covering the ditch they had dug. While at it, the complainant came from nowhere, confronted and attacked her causing the accused to scream for help which she got when a multitude of people gathered. She said that she equally reported the matter at the same police station, but her complaint fell on deaf ears and the matter was poorly investigated with a view of tormenting her and silencing her from her pursuit of a just resolution of an existing land dispute.
6. Both parties having closed their respective cases, the Court invited them to put in their closing arguments, but none opted to put in any, each placing their reliance on the record in the court file and invited the court to make its judgment based on the material available in the file.
7. Having heard both parties at their full lengths, the court retired to make its decision.

Analysis and Determination

8. From the evidence tabled before this court, I discerned that there is a boundary dispute between the accused and the Jamila school. It is undisputable that boundary disputes have caused tensions and at times wars not just between private citizens but also between states. Millions of people have died, millions worth of property destroyed and all kinds of arsenal developed just because of boundary disputes.
9. In my assessment of the evidence of PW 1, he withheld material information that appeared to place him to blame. For instance, while being examined-in-chief, he told the court that he peeped through the office window and saw a confrontation between the accused and the workers and that prompted him to go to the scene whereupon the accused attacked him. However, while the accused was cross-examining him to establish the motive or his interest in moving to the scene, the complainant changed the narrative and responded that his motive while getting out of the staffroom was to go home and seemingly, his experiencing the commotion was just but a coincidence while enroute home. Further, the complainant denied that he did attack the accused person and demonstrated himself as a person who was ready to settle the dispute in a very civil manner by even engaging the elders, but PW 2 testified in a manner that showed that there was indeed physical struggle between the accused and the complainant. This was in line with the accused's line of defence. Such selective submission of pieces of material make me find the complainant as a person who was economical with the truth and shared only that which suited him.
10. The accused produced an OB No. 42/06/01/2022 that was issued at Kwale Police Station at 1945 hours. While giving his testimony, the complainant said that he went to report at the police station later in the night. I do not have the benefit of knowing the time he reported but his OB No. is recorded, at the form P3 as 45/06/01/2022. This is a clear indication that it was reported after the accused had reported her matter. Indeed it can be seen as an afterthought aimed to cement a counterattack approach, the complainant having heard that the accused had reported.



11. In this regard, the accused took issue with the manner in which this matter was handled at the police station. She said that the investigating officer PC Ronald Kirui chased her away when she wanted to enquire the status of her complainant and to give the said investigating officer information that would help him in his investigations. While giving his evidence, PC Ronald Kirui was asked by the accused person whether he chased her away as such and whether he knew that she had made a report at the police station, both questions yielded a negative answer from the said officer.
12. In my observation, I tend to agree with the accused person when she says that the matter lacked objectivity in investigations and that the investigating officer was hostile to her. I say this because, the investigating officer feigned ignorance of the accused persons report which had been reported earlier by the accused person who took the initiative of approaching the said investigating officer with information regarding the now two complaints. I believe that even the accused person, as a suspect then was equally a complainant and she deserved to be hearkened to and her dismissal was unwarranted. My findings are fortified by the observation that as at 07/01/2022, investigations appear to have been concluded as the form P3 had been filed and there were only 2 prosecution witnesses who testified and hence their statements would not be expected to take long but again, the accused person was arraigned a month later. What was transpiring in the period between 07/01/2022 and 10/02/2022? A period of one month to investigate a simple assault case raises some red flags that can only be ignored at the very risk of sacrificing justice which I won't allow.
13. In the end, having analysed the evidence as a whole and contextualized the case holistically, I make a finding that there was no corroborated evidence to support the allegation by the accused person that the complainant attacked her but there was undoubted evidence to show that both the accused person and the complainant engaged in both verbal and physical altercation leading to their respective injuries and none should be made to carry the blameworthiness alone.

Disposition

14. From the foregoing, this court hereby dismisses the case against the accused person and forthwith acquits her under Section 215 of the [Criminal Procedure Code](#) for the offence of assault another and causing bodily harm which is proscribed under section 251 of the [Penal Code](#). The accused person who has been on the trial while on a cash bail of Ksh. 15, 000/= that was deposited in court on the 11th day of February 2022 is discharged forthwith. Consequently, the aforesaid cash bail deposited in court shall forthwith be refunded to the depositor.

JUDGMENT WRITTEN, DATED AND SIGNED AT NAIROBI ON THIS 15TH DAY OF JANUARY, 2024.

KIONGO KAGENYO

RESIDENT MAGISTRATE

This Judgment has been Delivered in Open Court at Kwale on this 19th day of February 2024, by Hon. C.K Auka in accordance with the provisions of section 200 (1) (a) of the [Criminal Procedure Code](#), upon the transfer of Hon. Kiongo Kagenyo (Mr.) (RM), to Milimani Small Claims Court effective 11th September 2023.

.....

In the presence of:

Mr. Khamis the Prosecutor

Mr. Hud the Court Assistant



Accused

