



**Omambia v Republic (Criminal Appeal E093 of 2024)
[2025] KEHC 15155 (KLR) (28 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 15155 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
CRIMINAL APPEAL E093 OF 2024
JK NG'ARNG'AR, J
OCTOBER 28, 2025**

BETWEEN

DICKSON NYAANGA OMAMBIA APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal from the conviction and sentence of the Chief Magistrate's Court at Etago (V.N. Moguche, RM) delivered on 9th August 2024 and 20th August 2024 in Criminal Case No. E078 of 2024)

JUDGMENT

1. Dickson Nyaanga Omambia, the appellant herein, was charged with the offence of grievous harm contrary to section 234 of the Penal Code. The particulars of the offence were that on 16th September 2023 at Nyamondo sub-location, Etago sub-county within Kisii County, the appellant unlawfully did grievous harm to Bernard Omagwa Samuel. The appellant was arraigned before the trial court where he pleaded 'not guilty'. After a full trial, the appellant was convicted of the offence and sentenced to 8 years imprisonment.
2. The appellant is dissatisfied with those findings. He filed an undated petition of appeal that raised 6 grounds disputing the findings of the trial magistrate. I have taken the liberty to summarize those grounds as follows: the appellant suggested that the element of actus reus was not proved beyond reasonable doubt as the incident was not intentional. He urged this court to take into account the fact that the appellant and complainant were and are still friends. Finally, the appellant prayed for pardon as he was a first offender, had a young family and was the sole breadwinner. For those reasons, the appellant prayed that the appeal succeeds and the sentence be reduced.
3. The appeal was heard by way of written submissions. However, as at the time of writing this judgment, I was not impressed with the appellant's submissions. The respondent on its part filed written



submissions through Principal Prosecution Counsel Shabola Ahindikha dated 25th August 2025 opposing the appeal. It pointed out that the appellant was only challenging the sentence. Accordingly, it submitted that the trial court awarded a proper and lawful sentence by taking into account the seriousness of the offence and the impact on the victim. It thus urged this court to dismiss the appeal in its entirety.

4. I have considered the submissions, examined the record of appeal and analyzed the law. As held by the court in *Kiilu & Another vs. Republic* [2005] KLR 174), in a first appeal, I am obligated to reappraise and re-evaluate the evidence and come to our own independent findings. The evidence captured in the record before me is as follows: PW1 Bernard Omagwa, the complainant herein testified that on 16th September 2023, he was at the market in the morning. While seated at the motorcycle shed, the appellant approached him and greeted him. The appellant then asked the complainant to give him Kshs. 50.00. However, PW1 had Kshs. 100.00 prompting them to leave the shed and look for change.
5. Upon finding change, the appellant took Kshs. 50.00 and purchased alcohol. On their way back, the appellant asked for another Kshs. 50.00 to which PW1 refused to give him. Unhappy, the appellant pushed the complainant, took his machete and cut him on the left side of his head and cheek. In the process of defending himself by shielding himself with his hand, the complainant sustained a cut on his left wrist and armpit, leaving his hand hanging loose. This caught the attention of one Everline prompting the appellant to run away.
6. PW1 fell down. He was taken to Kisii Teaching and Referral Hospital where he was admitted for one month. He thereafter reported the matter at Etago police station where he was issued with a P3 form that was filled at Etago sub-county Hospital. PW1 testified that following the cut, his hand was left weak.
7. Following the injuries PW1 sustained, PW2 Michael Onyoni testified that he received a call from Mason Tongi informing him that PW1 had been injured. He called PW1's uncles including PW3 Migiro Nyangoya. They found PW1 at St. James Hospital/Boige. He was unable to talk but had a visible hand injury. PW2, PW3 and PW1's uncles then took PW1 to Ogembo Hospital and later to Kisii Teaching and Referral Hospital.
8. PW4 Mauline Kwamboka Ombaba a registered clinical officer at Etago sub-county Hospital testified that PW1 came to their facility on 8th November 2023; one week after he had been discharged from Kisii Teaching and Referral Hospital on 28th October 2023. He had wounds and stitches and had visited their facility for further treatment. She confirmed that PW1 incurred a medical bill of Kshs. 100,000.00. He sustained injuries on the left side of his face, left hand and armpits. The medics at the facility removed the stitches and thereafter cleaned and dressed his wound. He was then put on medication.
9. One month later, on 28th December 2023, PW1's P3 form was filled. The injuries were classified as grievous harm taking into account that he underwent surgery when he sustained the injuries. However, they had since healed. She further confirmed that PW1 lost part of his hand and was left disabled as it could not be salvaged. She produced the treatment notes, the receipts and the P3 form.
10. PW5 PC Mathew Kipkorir the investigating officer at Etago police station conducted the investigations. He gathered evidence, recorded witness statements and charged the appellant with the present offence.
11. At the close of the prosecution's evidence, the trial court formed the opinion that the appellant had a case to answer. He was placed on his defence. He testified on his behalf and called one other witness. According to the appellant, DW1, on 16th September 2023, he came from work and went to a chang'aa



- den to split money with PW1. Thereafter, they bid their goodbyes and went their separate ways. Later one, he scouted several places that night together with the appellant when they were attacked by three unknown people. He sustained injuries.
12. Later DW1 was taken to Etago Hospital where he was treated and reported the matter at Etago police post to recorded his statement. However, the police refused to take his statement. Later on, he was arrested at Diplomat. He produced his outpatient card in evidence.
 13. DW2 Elizan Omambia Okemwa testified that on 16th September 2023, he discovered that the appellant had not slept at his home that night. At 5:00 a.m., he found the appellant crying. He told DW2 that he was about to die. He saw that the appellant was injured on his head, left hand and left leg. He took DW2 to the police station where he was also informed that his colleague had also been taken to hospital.
 14. Section 4 of the Penal Code defines grievous harm to mean “any harm which amounts to maim or dangerous harm or seriously and permanently injures health, or which is likely so to injure health, or which extends to the permanent disfigurement, or to any permanent or serious injury to any external or internal organ, membrane or sense.”
 15. It is firstly important to point out that the offence took place during the day when there was no case of mistaken identity. Furthermore, the appellant was well known to the complainant. This is also confirmed by the appellant in his defence. According to PW1, when he refused to give the appellant Kshs. 50.00, the appellant became angry. This prompted him to inflict bodily injuries on his left hand, head and cheeks using a machete.
 16. According to PW1 and PW4, the appellant was admitted at Kisii Teaching and Referral Hospital for one month. That demonstrates that the injuries he sustained were serious. PW4 further added that the complainant was left disabled and he lost a part of his hand as it could not be salvaged. The trial court further observed that when PW1 was testifying, his wrist was missing.
 17. Gathered from the above, I find that the evidence indeed proves that the appellant inflicted grievous harm on PW1 unlawfully for the reason that he refused to give him money. The trial court found that PW1 was a credible witness and his testimony was not challenged on cross examination. I therefore come to the conclusion that the appellant was certainly the perpetrator of the offence. He committed a heinous act leaving the complainant forever maimed.
 18. The trial court also considered the appellant’s defence. As rightly stated, the same was an afterthought as it was not put to the prosecution witnesses during their testimonies. Furthermore, no conclusive medical evidence was adduced to justify that he was injured as he alleged. He defence must fail. For the above reasons, I find that the appeal on conviction lacks merit. It is hereby dismissed.
 19. During his sentencing, the trial court considered the appellant’s mitigation to the extent that he prayed for forgiveness. The court also considered the pre-sentencing report. The trial court noted that the offence was prevalent in the area and there was need to give a deterrent sentence. The court further considered that the complainant lost a part of his body and will forever remain disabled. He was therefore sentenced to 8 years imprisonment.
 20. Section 234 of the Penal Code provides that any person who unlawfully does grievous harm to another is guilty of a felony and is liable to imprisonment for life. I therefore find that the sentence meted out by the trial court was lenient. In fact, the trial court ought to have sentenced him to life as provided by statute. It is therefore apparent that the sentence given was unlawful. However, since the prosecution failed to file a notice of enhancement of the sentence, I will not interfere with the sentence. I therefore dismiss the appeal on sentence in light of the reasons set out.



It is so ordered.

JUDGEMENT DELIVERED, DATED AND SIGNED VIRTUALLY THIS 28TH DAY OF OCTOBER, 2025.

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HON JULIUS K. NG'ARNG'AR

JUDGE

Judgement delivered in the presence of:

Siele/Kipchirchir (Court Assistants)

Appellant Present

Koime for the Respondent

