

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KIBERA**  
**CRIMINAL APPEAL NO. E071 OF 2025**

**HESBON MWANZA.....**  
**.....APPELLANT**

**VERSUS**

**REPUBLIC.....**  
**RESPONDENT**

*(Being an appeal against the original conviction and sentence delivered on 5<sup>th</sup> Day of May 2025 by Hon. M.W. Murage (PM) at Kibera Chief Magistrate's Court, Criminal Case No. E1350 of 2023 Republic vs Hesbon Mwanza)*

**JUDGEMENT**

- 1.The appellant was charged and after a full trial convicted for the offence of grievous harm contrary to section 234 of the Penal Code. The particulars of the offence as per the charge sheet are that on the 8<sup>TH</sup> Day of August 2023 at GTC building along Westlands road in Westlands Sub-County within Nairobi County, jointly with another, not before court, willfully and unlawfully caused grievous harm to Joseph Obara. He was sentenced to serve five (5) years' imprisonment.
2. Being aggrieved, he filed an appeal challenging his conviction and sentence. In his petition of appeal, he challenged the totality of the prosecution's evidence against which he was convicted. He complained that the prosecution did not meet the standard of proof as required. He urged the court to quash his conviction and set aside the sentence imposed.
- 3.The appeal was canvassed by way of written submissions by both parties, which have been duly considered without the need to rehash them. This is the first appellate court and in **Okeno v. R [1972] EA 32**, the Court of Appeal for East Africa laid down what the duty of the first appellate court is. It is to analyse and

re-evaluate the evidence which was before the trial court and come to its own conclusions on that evidence without overlooking the conclusions of the trial court but bearing in mind that it never saw the witnesses testify.

4. The prosecution called four (4) witnesses in support of their case. PW1, Joseph Chama, testified that on 8th August 2023 at about 5.00 pm, he was at the GTC site where he worked with the appellant. He met Otaia, a friend of the appellant, and they exchanged pleasantries. PW1 inquired about a prior scuffle involving the appellant, to which he explained that it had been a joke. Otaia responded by stating that the appellant was “untouchable”. According to PW1, Otaia then held him as the appellant assaulted him by striking him twice on the right side of the jaw.
5. PW1 stated that following the assault, he sought medical attention at Mbagathi Hospital and was subsequently referred to Kenyatta National Hospital. He testified that he attempted to seek assistance from the appellant towards his treatment, but the appellant declined. PW1 further stated that since the incident he has been unable to chew hard food. He later reported the matter at Parklands Police Station. On cross examination, PW1 stated that the incident arose from a misunderstanding, as the appellant believed PW1 was another person.
6. PW2, Dr Kamau Mariga, a police doctor, testified and produced the P3 Form in respect of PW1. He stated that the medical history indicated assault. On examination, PW1 was found to have sustained a fracture at the right angle of the mandible, with tenderness on the right side. The injury was classified as grievous harm. In cross examination, PW2 stated that the injury

was caused by blunt force trauma and that it was possible for such an injury to be sustained in the course of a fight.

7.PW3, Charles Mutunga Munyiri, testified that he was present and corroborated the account given by PW1. He stated that he observed PW1 after the incident and noted injuries to his teeth.

8.PW4, Joseph Munyao, the investigating officer, testified that he received the report, recorded statements from the witnesses, and carried out investigations. His testimony aligned with the accounts given by PW1, PW2 and PW3.

9.In his defence, the appellant testified that on the material day there was a confrontation at the GTC site, after which he left the scene. He denied assaulting PW1 and stated that they had previously maintained a good working relationship. During cross examination, he stated that there were many people at the site and that the incident had been wrongly attributed to him.

10.Upon conclusion of the trial, the trial court rendered its decision and convicted the appellant.

11. Section 234 of the Penal Code provides for the offence of Grievous Harm as follows:

**Any person who unlawfully does grievous harm to another is guilty of a felony and is liable to imprisonment for life.**

12.Section 4 of the Penal Code defines grievous harm as any harm which amounts to a maim or dangerous harm, or which seriously or permanently injures health, or is likely to do so, or which results in permanent disfigurement, or causes any permanent or serious injury to any external or internal organ, membrane, or sense. This statutory definition provides the framework within which the court must assess whether the injuries proved at trial meet the legal threshold of grievous harm.

13. In the present case, evidence of grievous harm was established through a combination of medical findings and testimonial evidence. The complainant sustained injuries during the incident, the most significant being a fracture at the right angle of the mandible. These injuries were documented and confirmed through medical examination. Dr Kamau Mariga, who testified as PW2, produced the P3 Form and classified the injuries as grievous harm within the meaning of the Penal Code. His evidence placed the nature and severity of the injuries beyond mere speculation and brought the case squarely within the statutory definition.
14. The medical evidence was further supported by the testimony of PW3 and PW4, who gave accounts consistent with the complainant's condition following the incident. Their evidence related to the physical state of the complainant after the assault and the visible effects of the injuries sustained. Taken together, the medical and testimonial evidence set out a clear account of the harm suffered by the complainant and firmly established that the injuries were serious in nature and not transient or minor.
15. Section 231(b) of the Penal Code addresses acts intended to cause grievous harm and refers to the use of a dangerous or offensive weapon. While the provision expressly mentions weapons, the court must consider the manner in which force was applied and the resulting injuries. From the record, the complainant sustained loose teeth and a fractured mandible, injuries that are consistent with the application of significant physical force. The nature of these injuries points to the deliberate use of force by the appellant to inflict harm of a serious character.

16. On the issue of mens rea, it is settled law that it is unlawful to strike, cut, or otherwise wound another person without lawful justification. The offence of grievous harm is complete where an accused person intentionally assaults another and grievous harm results. The requisite mens rea is established by the intentional application of unlawful force that causes such harm. Under the Penal Code, mens rea may only be negated in limited circumstances, including insanity under section 12, or intoxication induced by the complainant under section 13, where the accused is rendered incapable of understanding his actions or their unlawfulness.
17. In the present matter, no evidence was tendered to suggest that the appellant suffered from insanity, nor was there any claim that he was intoxicated in a manner contemplated by the law. These statutory exceptions were neither raised nor argued in his defence. In the absence of such factors, the element of mens rea remains intact.
18. I am therefore satisfied that all the ingredients of the offence of grievous harm were proved against the appellant beyond reasonable doubt. The conviction was proper and is hereby upheld.
19. On sentence, the appellant was sentenced to five (5) years' imprisonment. Section 234 of the Penal Code provides that a person convicted of grievous harm is liable to imprisonment for life. The sentence imposed was therefore lawful. The record shows that the trial court considered the appellant's mitigation, including the fact that he was a first offender, and exercised its discretion accordingly. There is no basis upon which this court can interfere with the sentence imposed.

20. The sentence imposed was legal and appropriate under the circumstances. In the end, I find that the appeal is found to be lacking in merit and is dismissed.

Orders accordingly.

**Judgement dated and delivered virtually this 17<sup>th</sup> day of December 2025**

**D. KAVEDZA**  
**JUDGE**

**In the presence of:**

Mr. Abdi h/b for Mr. Murage for the Appellant

Mr. Mutuma for the Respondent

Karimi Court Assistant.