

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KIBERA
CRIMINAL APPEAL NO. E055 OF 2025

**CYRIL MUKHUNJI
MAKATIANI.....APPELLANT**

VERSUS

**REPUBLIC.....RESPONDE
NT**

(Being an appeal against the original conviction and sentence imposed by Hon. Murage (P.M) on 12th March 2025 at Kibera Chief Magistrate's Court Criminal Case No. E246 of 2025 Republic vs Cyril Mulhunji Makatiani)

JUDGEMENT.

1. The appellant was charged and after a full trial convicted of two counts of offence: Count I, assault causing actual bodily harm contrary to section 251 of the Penal Code and count II, malicious damage to property contrary to section 339(1) of the Penal Code. He was sentenced to pay a fine of Kshs. 20,000 in default six (6) months imprisonment in Count I, and Kshs. 30,000 in default to serve six (6) months imprisonment in Count II.
2. Aggrieved, he filed the present 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 argued that the trial magistrate failed to consider his defence. He urged the court to quash his conviction and set aside the sentence imposed.
3. As this is a first appeal, I am required to conduct a fresh evaluation of all the evidence and come to an independent conclusion as to whether or not to uphold the conviction and sentence. This task must have regard to the fact that I never saw

or heard the witnesses testify (see **Okeno v Republic [1973] EA 32**).

4. The prosecution's case was that on 6th November 2023 at about 11.45 am, PW1, Victor Bett, went to Beta Logic Garage along Suna Road, having earlier taken his motor vehicle there for repairs. He arrived before the agreed meeting time and sat at the reception, where he opened his grey HP Spectre laptop. The appellant, the proprietor of the garage, approached PW1 and demanded that he leave the premises. PW1 declined, stating that he would not leave without his vehicle.
5. The appellant instructed PW1 to return at 2.00 pm. Upon PW1's refusal, the appellant punched him on the left shoulder, causing the laptop to fall. The appellant then gave PW1 one minute to leave the garage and walked away.
6. PW1 began recording the incident on his mobile phone as he walked towards the appellant. This prompted the appellant to return in an aggressive manner, seize PW1 by the shirt at the neck, pull him from his seat, and drag him outside while shouting at him. The appellant attempted to grab PW1's phone, pushed him against a wall, pinned him with his left hand, and covered PW1's mouth with his right hand, injuring PW1's lips.
7. DW2 and another colleague intervened and asked the appellant to stop. The appellant disengaged, after which DW2 asked PW1 to leave. As PW1 was leaving, the appellant returned and threw PW1's bag at him. PW1 picked up his phone and left with his friend, PW2, who had been waiting outside the gate.
8. PW1 testified that he later went to Goodlife Chemist and then to Mbagathi Hospital, where he was examined and issued with a P3 form dated 9th November 2023. He produced treatment notes,

his damaged laptop, a cracked laptop bag, a power bank, photographs of his injuries, a search certificate dated 22nd December 2023, message records, and the video recording of the incident, all of which he supplied to the investigating officer.

9. On cross-examination, he maintained that he was not escorted out but assaulted, and clarified that a laptop referred to by DW2 did not belong to him.
10. PW2, Chelangat Purity, testified that she was outside the garage gate, which was partially closed. She saw the appellant hold PW1 by the neck and throw PW1's laptop bag and power bank. When PW1 emerged, his shirt was dishevelled, his tie loosened, and his lower lip was injured. On cross-examination, she confirmed that the gate was partially open and that she recognised PW1's voice during the commotion.
11. PW3, Kamau Mariga, a police surgeon at Mbagathi Hospital, testified that on 9th November 2023 he examined PW1 and formed the opinion that PW1 had been assaulted. He observed injuries to the lip, neck, and right cheek, approximately three days old, consistent with blunt force trauma. He filled and produced the P3 form.
12. PW4, Chief Inspector Charles Kiia of the Police Headquarters Digital Forensic Laboratory, testified that on 22nd February 2024 he received video footage recorded on 6th November 2023 from PW1. The footage, which he analysed and produced as an exhibit, showed the appellant attacking PW1.
13. PW5, Sergeant Joram Karani of Kilimani Police Station, testified that PW1 reported the incident to him on 7th November 2023. He issued PW1 with a P3 form, later filled by PW3, and subsequently summoned the appellant.

14. In his defence, the appellant gave sworn evidence and called one witness. He denied assaulting PW1 or damaging his property, asserting that PW1 was disruptive, taking photographs, and calling others to the garage. He stated that he merely held PW1's hand and escorted him out without violence. DW2, Sharon Akinyi Odhiambo, an administrator at the garage, supported this account, stating that she did not witness any assault and that PW1 left with his laptop and bag intact.
15. After considering the grounds of appeal, the rival submissions, and upon re-evaluating the entire record as a first appellate court, the central question is whether the prosecution proved beyond reasonable doubt the offences of assault causing actual bodily harm and malicious damage to property.
16. Section 251 of the Penal Code provides that:
- “Any person who commits an assault occasioning actual bodily harm is guilty of a misdemeanour and is liable to imprisonment for five years.”**
17. The prosecution was therefore required to establish that the appellant assaulted the complainant and that the assault resulted in actual bodily harm.
18. PW1 gave a detailed and consistent account of the events at the garage on 6th November 2023. He testified that the appellant punched him, forcibly dragged him out of the premises, pinned him against a wall, and restrained him by the neck and mouth, causing injury to his lips and face. This account was materially corroborated by PW2, who witnessed the incident from the gate and observed the appellant holding PW1 by the neck, throwing his bag, and PW1 emerging with visible disarrayed clothing and an injured lip.

19. PW4 further strengthened the prosecution case by producing and analysing video footage recorded contemporaneously, which showed the appellant's aggressive conduct towards PW1. PW3, the police surgeon, examined PW1 three days later and confirmed injuries to the lip, neck, and cheek consistent with blunt force trauma, classifying them as harm. The medical evidence accords with and corroborates the eyewitness testimony.
20. The appellant's defence was a denial, asserting that he merely escorted PW1 out and that no assault occurred. DW2 similarly downplayed the incident. However, this version does not satisfactorily explain the injuries confirmed by medical evidence, nor does it displace the consistent and mutually reinforcing testimonies of PW1, PW2, and the objective video evidence. Minor discrepancies raised on cross-examination do not go to the substance of the offence and are expected in truthful testimony. I am satisfied that the prosecution proved the offence of assault causing actual bodily harm beyond reasonable doubt.
21. Turning to the offence of malicious damage to property, section 339(1) of the Penal Code states:
- “Any person who wilfully and unlawfully destroys or damages any property is guilty of an offence.”**
22. The elements are ownership of the property, damage, and wilful and unlawful causation by the accused. PW1 testified that during the assault his HP Spectre laptop fell and was damaged, and that the appellant subsequently threw his laptop bag and power bank at him. He produced the cracked laptop, bag, power bank, and proof of ownership. PW2 corroborated seeing the appellant throw PW1's belongings.

23. Although no expert report was tendered to assess the extent of damage, the damaged laptop was produced in court. Proof of value is not an essential element; proof of damage suffices. The appellant's denial, and DW2's assertion that the laptop did not fall, do not account for the damaged exhibit produced, nor do they rebut the consistent prosecution evidence.
24. The damage to the laptop was a direct and foreseeable consequence of the appellant's unlawful use of force and his deliberate handling of PW1's belongings. On the evidence, the damage was wilful within the meaning of section 339(1).
25. In the totality of the evidence, I find that the prosecution discharged its burden in respect of both offences. The convictions for assault causing actual bodily harm and malicious damage to property were therefore sound and are upheld.
26. The appellant was sentenced to pay a fine of Kshs. 20,000 in default to serve six (6) months' imprisonment on Count I, and a fine of Kshs. 30,000 in default to serve six (6) months' imprisonment on Count II. The trial court expressly considered that the appellant was a first offender and considered his mitigation. The sentence imposed was lawful, proportionate, and well within the statutory limits. I find no basis upon which to interfere with the exercise of the trial court's discretion. The sentence is therefore upheld.
27. In the premises, the appeal is found to be lacking in merit and is dismissed in its entirety.

Orders accordingly.

Judgement dated and delivered virtually this 19th day of December 2025

D. KAVEDZA
JUDGE

In the presence of:

Mr. Omondi Oketch for the Appellant

Mr. Mutuma for the Respondent

Karimi Court Assistant.

ORIGINAL FILE COPY