



**Nyaguthii v Republic (Criminal Appeal E075 of 2024)
[2025] KEHC 19070 (KLR) (18 December 2025) (Judgment)**

Neutral citation: [2025] KEHC 19070 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CRIMINAL APPEAL E075 OF 2024
WM KAGENDO., J
DECEMBER 18, 2025**

BETWEEN

NANCY NYAGUTHII APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal from the Judgment of Hon. R.O. Mbogo (SRM) delivered on 25th October 2024 in Mombasa Chief Magistrate's Court Criminal Case No. E110 of 2022)

JUDGMENT

Background

1. The Appellant and a co-accused were charged on 2nd February 2022 with the offence of grievous harm contrary to Section 234 of the Penal Code.
2. The particulars of the charge were that on 23rd January 2022, at Kadzandani area, Nyali Sub-County within Mombasa County, the Appellant unlawfully caused grievous harm to Caleb Mwangi Nguere, a child aged 13 years.
3. The Appellant also faced an alternative charge of subjecting a child to cruel punishment contrary to Section 18(1) as read with Section 20 of the Children's Act, No. 8 of 2001, the particulars being that while a school director at Gremon Education Centre, she negligently subjected the child to cruel punishment by beating him with a plastic pipe.
4. The second accused entered into a plea bargain, pleaded guilty, was convicted, and testified as a prosecution witness.
5. The matter proceeded to full hearing. The prosecution called seven (7) witnesses, while the defence called four (4) witnesses. The trial court convicted the Appellant and sentenced her to ten (10) years' imprisonment.



6. Aggrieved by both conviction and sentence, the Appellant filed the present appeal.

Grounds of Appeal

7. The Appellant challenged the conviction and sentence on the grounds that: The prosecution evidence was contradictory and unreliable; The defence evidence and alibi were disregarded; The case was not proved beyond reasonable doubt; The sentence imposed was excessive and discriminatory; The trial court failed to consider mitigating circumstances.

Duty of the First Appellate Court

8. This Court is guided by *Okeno v Republic* [1972] EA 32, which requires a first appellate court to re-evaluate the evidence afresh and draw its own independent conclusions, while bearing in mind that the trial court had the advantage of seeing and hearing the witnesses.

Evidence Before the Trial Court Prosecution Case

9. PW1 – Iddi Saidi, the second accused turned prosecution witness, testified that on 23rd January 2022, the Appellant, who was the school director, called him and inquired whether the chapatis she sold had been stolen. She alleged that 22 chapatis were missing.
10. PW1 stated that he informed the Appellant that Caleb, the complainant, was suspected and was in the dormitory. The Appellant instructed him to produce the complainant. A green plastic pipe was brought, and the Appellant ordered the complainant to remove his clothes and remain in his boxer.
11. The Appellant then ordered the complainant to lie on the floor and personally caned him more than ten times on the back, buttocks, and legs. She further directed that each student present should cane the complainant twice, threatening punishment for any who failed to comply.
12. PW1 testified that over 50 students, ranging from Standard 1 to Form 4, participated in the assault. The complainant later became unable to attend class due to pain and injuries.
13. PW1 further testified that the Appellant gave him Kshs. 700 to take the complainant to a private hospital. He took him to Kwa Bulu Medical Centre, where painkillers were administered and referral to a public hospital was advised.
14. PW1 stated that the complainant remained weak and confined to the dormitory. Attempts by the complainant's sister to access him were denied. Eventually, the complainant's parents were informed, and police intervention followed.
15. On cross-examination, PW1 maintained that the Appellant personally beat the complainant and directed other students to do the same.
16. PW2 – Caleb Mwangi Ngure, the complainant, testified that he was 14 years old and a pupil at Gremon Education Centre. On 23rd January 2022, he admitted stealing chapatis belonging to the Appellant.
17. He stated that the Appellant ordered PW1 to remove his clothes and instructed him to lie down. The Appellant then beat him with a green pipe more than ten times on the back and buttocks.
18. PW2 testified that the Appellant ordered other students to beat him twice each. Thereafter, PW1 continued beating him in the dormitory.



19. He stated that he was unable to attend classes, suffered immense pain, and was eventually taken to hospital. He was later admitted at Coast General Hospital, where he stayed for over three months, underwent surgery, dialysis, and ICU admission.
20. On cross-examination, PW2 remained consistent that the Appellant initiated and directed the assault.
21. PW3 – Martha Njoki Karani testified that she visited the school on 30th January 2022 and was informed by a student that the complainant was seriously ill, despite assurances from the Appellant that he was well. She alerted the complainant’s mother.
22. PW4 – Fredrick Ngure, the complainant’s father, testified that he found his son unable to walk or talk, with visible injuries all over his body. He reported the matter to the police and took the child to hospital.
23. PW5 – Agnes Waither Muturi, the complainant’s mother, testified that her son had extensive injuries and was hospitalised for over two months, underwent surgery, ICU admission, dialysis, and counselling.
24. PW6 – Dr. Gabriel Munyila, a medical officer at Coast General Hospital, produced a P3 Form and medical report indicating: Lacerations over 50% of the body Acute kidney injury Penile swelling Blunt force injuries He classified the injuries as grievous harm.
25. PW7 – IP Muna Mohamed, the investigating officer, testified on receiving the report, visiting the complainant in hospital, recording statements, and producing documentary exhibits including the birth certificate, school records, and photographs.

Defence Case

26. DW1 – Nancy Nyaguthii, the Appellant, testified that she was not present on the material day, claiming she had travelled from Nairobi and produced SGR tickets. She denied assaulting the complainant or knowledge of the incident.
27. On cross-examination, she admitted she did not produce any Mpesa statements to support claims of medical assistance.
28. DW2 – Joash Momanyi, the Appellant’s husband and co-director of the school, testified that no incident was reported to him and denied that the Appellant sold chapatis at school.
29. DW3 – Edwin Maragia, a teacher at the school, testified that he was not present when the incident occurred and only learnt of it when the parents arrived.
30. DW4 – Said Nyamawi, a student, testified that the complainant was beaten by PW1 and other students upstairs and that no adult intervened.

Issues for Determination

31. Whether the offence of grievous harm was proved beyond reasonable doubt.
32. Whether the conviction was safe.
33. Whether the sentence imposed was lawful and justified.

Analysis and Determination Proof of Grievous Harm

34. Section 234 of the Penal Code criminalises the unlawful infliction of grievous harm, punishable by life imprisonment.



355. The definition under Section 4 of the Penal Code, as affirmed in *John Oketch Abongo v Republic* [2000] eKLR, was fully satisfied by the medical evidence.
36. The injuries sustained were severe, life-threatening, and permanent in nature.

Participation of the Appellant

37. The evidence of PW1 and PW2 was consistent, detailed, and corroborated by medical and circumstantial evidence. This was a case of recognition, not mistaken identity. The trial court found the evidence consistent and credible and I totally agree.
38. The Appellant's alibi amounted to mere denial and did not displace the prosecution's case. There is no way a child under her care could have sustained such serious injuries and remained hidden for almost a week without her knowledge. The defence witnesses were not truthful and their attitude of see no evil and hear no evil when a child lay critically injured must be condemned in the strongest of terms. They must count themselves lucky not to have been charged as accomplices.
39. The appellant was a person in authority, a mother figure expected to nurture and protect children left under her care not butcher them. The denial of medical care was also reckless to say the least.

Constitutional Considerations

40. Article 53(1)(d) of *the Constitution* guarantees a child protection from abuse and violence.
41. Article 53(2) provides that the best interests of the child are paramount.
42. Articles 28 and 29(d) protect human dignity and prohibit cruel, inhuman, and degrading treatment.
43. The Appellant's conduct constituted a grave constitutional violation against a vulnerable child.

Sentence

44. The principles in *Bernard Kimani Gacheru v Republic* [2002] eKLR apply.
45. The sentence of ten (10) years' imprisonment was lawful and within statute.
46. This Court notes that had notice been given, it would have considered enhancement of sentence due to the aggravated nature of the offence. The Court is, however, constrained by law.
47. The Appellant shall therefore serve the sentence in full and take the time to consider her actions which betrayed her position of trust.
48. The sentence should also serve as an example to other like minded individuals.

Conclusion and Orders

49. The appeal lacks merit and is dismissed.
50. The conviction is upheld.
51. The sentence of ten (10) years' imprisonment is affirmed.
52. This judgment shall serve as a deterrent: children are vulnerable rights- holders, not objects of violent discipline.
53. It is so ordered.



**DATED, SIGNED AND DELIVERED VIRTUALLY AT MOMBASA THIS 18TH DAY OF
DECEMBER 2025**

WENDY KAGENDO JUDGE

In the presence of: The Appellant – in person Mr. Ngiri – for the State
Bebora – Court Assistant

