

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KIBERA
CRIMINAL APPEAL NO. 8 OF 2025

ISSA SENGIYUMUA.....
.....APPELLANT

VERSUS

REPUBLIC.....
RESPONDENT

(Being an appeal against the original conviction and sentence delivered on 19th May 2025 by Hon. M. Murage (P.M) at Kibera Chief Magistrate's Court Criminal Case no. E729 of 2024 Republic vs Issa Sengiyumva)

JUDGEMENT

1. The appellant Issa Sengiyumva was charged and after a full trial convicted for the offence of grievous harm contrary to section 234 of the Penal Code. He was sentenced to serve seven (7) years imprisonment. Being aggrieved, he filed an appeal challenging his conviction and sentence.
2. In the petition of appeal and amended grounds of appeal, he raised the following main grounds: The appellant challenged the totality of the prosecution's evidence against which he was convicted; he challenged the sentence imposed as being excessive and urged the court to quash his conviction and set aside the sentence.
3. 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 that was before the trial court, and itself 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 witnesses in support of its case. PW1, Nicholas Matendechere, testified that in the early hours of the morning, at about 12.51 am, he was on his way to work when he purchased coffee and mandazi from the appellant. Payment was to be made via M-Pesa. He handed over his phone to facilitate payment, after which the appellant indicated that no confirmation message had been received. Upon checking, PW1 realised that the payment had been sent to an incorrect number. Attempts to reverse the transaction were unsuccessful. PW1 informed the appellant that he would refund the amount later in the day. The appellant objected and restrained him. When PW1 attempted to free himself, the appellant punched him, causing him to fall.
5. A third party paid the sum of Kshs 30 on his behalf. PW1 testified that upon returning to the vending area, the appellant produced a knife and stabbed him. He was taken to Avenue Hospital for treatment and later recorded a statement with the police. He produced treatment notes from Avenue Hospital, referral notes from Kenyatta National Hospital, a P3 form, and a discharge summary as exhibits. In cross-examination, PW1 denied assaulting or threatening the appellant.
6. PW2, Marvin Wabwana Kombo, testified that he was in the company of PW1 while heading to work. When PW1 lagged behind, he went back to check on him and found him bleeding from the mouth. PW1 informed him that he had been assaulted by a coffee vendor following a dispute over payment sent to the wrong M-Pesa number. PW2 advised PW1 to return and settle the payment. Upon approaching the appellant and seeking clarification, the appellant

drew a knife from his jacket and stabbed PW1 on the left side of the chest.

7. PW2 testified that the appellant threatened him and attempted to flee but was apprehended by members of the public. PW2 arranged transport and took PW1 to Avenue Hospital and later to Kenyatta National Hospital. He identified the appellant in court and reported the matter at Parklands Police Station. In cross-examination, PW2 denied that PW1 had assaulted the appellant or damaged his property and maintained that he witnessed the stabbing.
8. PW3, Doctor Fatma Dakan, testified that PW1 was admitted on 6th March 2024 and discharged on 19th March 2024, having been referred from Avenue Hospital. She stated that PW1 had sustained a stab wound on the left upper chest. She produced the referral notes from Avenue Hospital, the discharge summary, the Kenya Police Medical Examination Report, and the discharge clearance form as exhibits.
9. PW4, John Olela, a police officer attached to Parklands Police Station, testified that a report was received that the complainant had been stabbed and admitted at Avenue Hospital. He visited the hospital and found the complainant conscious and undergoing treatment. He stated that the incident occurred along Second Avenue, Parklands, near a construction site where the complainant worked. He also visited the scene and recorded statements from witnesses who sold tea in the area and who indicated that they knew the appellant and his place of residence. PW4 testified that he subsequently filed an application seeking to detain the appellant for seven days. On cross-examination, he confirmed that no weapon was recovered and that there was no CCTV footage.

10. The defence case was presented by the appellant, who testified on oath. He stated that he was a coffee and mandazi vendor operating near Avenue Hospital and that on the material morning a customer ordered coffee and two mandazi for Kshs 30. The customer provided a phone number for payment, but no M-Pesa confirmation was received. The appellant followed the customer and questioned him about the payment. The customer informed him that the money had been sent to the wrong number.
11. A disagreement ensued, during which, according to the appellant, the customer pushed him and threw a stone at him. He testified that a passer-by paid the Kshs 30 and advised them to leave. The appellant returned to his place of work. He further testified that shortly thereafter he was struck on the head with a stone by the complainant and sustained injuries. He stated that he went home to obtain money to seek medical treatment, but was arrested by police officers at his residence and informed that he had assaulted someone. He denied stabbing the complainant and maintained that he was himself a victim of assault.
12. On cross-examination, the appellant stated that he was a Burundian national who had entered Kenya in July 2023 and did not possess a work permit. He testified that he sought treatment at Kangemi and did not report any damage to his items. He denied attempting to hide from the police and stated that he did not know who had alleged that he stabbed the complainant.
13. The trial court considered the evidence in totality and convicted the appellant.
14. 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.

15. Section 4 of the Penal Code defines grievous harm as follows: -

"grievous harm" means any harm which amounts to a maim or dangerous harm, or seriously or permanently injures health, or which is likely so to injure health, or which extends to permanent disfigurement, or any permanent or serious injury to any external or internal organ, membrane or sense;

16. Evidence of grievous harm in this case was established through medical and testimony before the trial court. The complainant, PW1, sustained a stab wound to the left upper chest following the incident involving the appellant. He was initially treated at Avenue Hospital and thereafter referred to Kenyatta National Hospital, where he was admitted from 6th March 2024 to 19th March 2024. The nature and severity of the injury were documented in the treatment notes, referral notes, discharge summary, and the P3 form, all of which were produced in evidence. PW3, Doctor Fatma Dakan, confirmed that the complainant had suffered a penetrating stab wound to the chest, necessitating prolonged admission and medical intervention.

17. Section 231(b) of the Penal Code recognises grievous harm as including harm occasioned through the use of a dangerous or offensive weapon. From the evidence on record, the injury sustained by the complainant was caused by a sharp object. Both PW1 and PW2 testified that the appellant produced a knife and stabbed the complainant on the chest. The medical findings by PW3

were consistent with a stab wound inflicted by a sharp weapon, thereby corroborating the eyewitness accounts. A knife is, by its nature, a dangerous weapon within the meaning of the Penal Code.

18. As regards mens rea, it is settled law that it is unlawful to stab or otherwise wound another person. The offence of grievous harm is complete where an accused person intentionally assaults another and grievous harm results. Intention may be inferred from the nature of the weapon used, the manner in which it was used, and the part of the body targeted. In this case, the appellant stabbed the complainant on the chest, a vulnerable and vital part of the body, using a knife. There was no suggestion that the appellant was labouring under any disability contemplated under sections 12 or 13 of the Penal Code, nor was any lawful justification advanced to negate intent.
19. In the circumstances, I am satisfied that all the ingredients of the offence of grievous harm were proved against the appellant beyond reasonable doubt. The conviction was therefore properly entered and is upheld.
20. On sentence, the appellant was sentenced to seven years' imprisonment. Section 234 of the Penal Code provides that a person who unlawfully causes grievous harm to another is guilty of a felony and is liable to imprisonment for life. The sentence imposed was within the discretion of the trial court and fell well within the statutory limits.
21. During sentencing, the trial court considered the appellant's mitigation and that he was a first offender. The sentence imposed was legal and appropriate under the circumstances.

22. In the end, I find that the appeal is found to be lacking in merit and is dismissed in its entirety.

Orders accordingly.

**Judgement dated and delivered virtually this 18th day of
December 2025**

**D. KAVEDZA
JUDGE**

In the presence of:

Appellant Present

Mutuma for the Respondent

Karimi Court Assistant.