



**Ithalie v Republic (Criminal Appeal E132 of 2023)
[2026] KEHC 506 (KLR) (27 January 2026) (Judgment)**

Neutral citation: [2026] KEHC 506 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL APPEAL E132 OF 2023
SM GITHINJI, J
JANUARY 27, 2026**

BETWEEN

PETER ITHALIE APPELLANT

AND

REPUBLIC RESPONDENT

JUDGMENT

1. peter ithale, the Appellant herein, was charged in the Lower Court with the offence of grievous harm, contrary to Section 234 of the Penal Code.
2. The particulars of this offence are that on the 13th day of February, 2021 of Tiira Location, Igembe South sub County, within Meru County, the Appellant did grievous harm to Timothy Kailenya.
3. The prosecution case is that the complainant in this case who offered evidence as PW-1 lives at Athi. He sells miraa. Land parcel No. Meru Kirindene “B”/1189 belongs to his late father. He produced its title in Court as an exhibit. On 13/2/2021 at about 11.00 am he was on the said land where he had grown miraa. The Appellant who is their immediate neighbor accosted him at the place. He asked the complainant in whose miraa farm he was at. He was claiming the land was his. The complainant answered him that he was at his late father’s land. The Appellant had a club and hit the complainant with it on the back and head. He then took the knife and the jacket of which the complainant had. He was very harsh and threatened to cut the complainant legs. Using a C-line he aimed to cut the complainant on the head. The complaint parried using the right hand and was cut on the right wrist joint. PW-2 who’s their neighbor was attracted to the scene by the noise the two were making. He witnessed the incident and called upon the relatives of the complainant to take him to the hospital.
4. The complainant was rushed to Chaaria Mission Hospital. He was admitted for 2 weeks. He had a fracture of the right distal radius. Operation was done and a plate was implanted. 10 months later he had the said wound and the hand could not stretch. After discharge he was referred to Nyambane



Hospital for physiotherapy. The P3 form was filled on 8/12/2021 and the degree of injury assessed as grievous harm.

5. The matter was investigated by PW-4 who recorded witness statements. The Appellant was arrested by members of the public and taken to the Police station. He was re-arrested and charged.
6. The Appellant gave sworn testimony in his defence and called two witnesses. His defence is that on 13/2/2021 he was at his farm parcel No. 1191. Very many people approached him at the place. They claimed to be area Managers. They told him he was needed by the Area Chief. On the way they assaulted him. They alleged they had work for him. They took him to Joel Munene's house (PW-2). He found someone there lying on the floor. They uncovered him and he noted that he was bleeding. He was forced to carry him to Kitithine. He refused to do so and was beaten by Erick, Mwaki, Mugambi, Maringoo and others present. He was then abandoned. Mary Gacheke (DW-3) and James Gitonga took him to the hospital. DW-3 was forced to carry the man who was bleeding. He says he was framed up.
7. DW-2 and DW-3, the Appellant witnesses did not witness the incident alleged against him but got to the scene when the Appellant was arrested by members of the public and assaulted.
8. The Trial Court evaluated the evidence and found the accused guilty of the offence. He was convicted and sentenced to serve 9 years imprisonment.
9. Dissatisfied with the said conviction and sentence, he appealed to this Court on the grounds that:-
 1. He was not sufficiently identified by the witnesses at the scene of the crime.
 2. The offence charged with was not proved beyond reasonable doubt.
 3. The prosecution case was riddled with contradiction and lies which the trial Court did not detect.
 4. The finding of the Lower Court is against the weight of evidence.
 5. The defence was not sufficiently considered.
 6. The sentence meted against him is harsh and excessive.
10. The Appeal was canvassed by way of written submissions but only the Respondent filed submissions.
11. As the first Appellate Court I have re-evaluated the charge, evidence adduced in the Lower Court, Judgment of the Lower Court, and sentence meted; grounds of the Appeal and submissions by the Respondent.

Section 4 of the Penal Code (Cap 63) defines "grievous harm" as,
"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 do any permanent or serious injury to any external or internal organ, membrane or sense."
12. To secure a conviction under this offence, the prosecution must prove the following beyond reasonable doubt:-
 1. The victim sustained grievous harm.
 2. The harm was caused unlawfully. This means there was no lawful justification or excuse for causing the harm.
 3. The accused person caused or participated in causing the grievous harm.



13. The Prosecution case shows that the victim in this case was cut and fractured on the right wrist joint which healed with deformity and is unable to use the limb. The Medical Officer who filled the P3 form assessed the degree of injury as grievous harm. The evidence is not challenged at all and the prosecution proved beyond reasonable doubt that the victim suffered grievous harm.
14. The victim and the Appellant had a dispute over the land which the Appellant claimed belonged to him while the victim claimed it was for his late father. At least the victim produced a title deed for the land in the name of his late father and claimed the Appellant was out to grab it. The victim was attacked by the Appellant while in the said land. The evidence reveals that the Appellant took the law into his own hands when he attacked the victim instead of following the right legal process to resolve the dispute. His action cannot be lawfully justified. It was not even in self defence as the victim made no attempt to attack him.
15. The Appellant was well known to PW-1 and PW-2 as a neighbor. PW-2 said he had known him for over 10 years. The victim had even an exchange with him, and the two witnesses could not have made a mistake of him. He was properly recognized by the two witnesses. He is the real culprit.
16. His defence amounts to mere denial. His two witnesses did not witness the incident and only got into the picture during his arrest. Given the weight and credibility of the prosecution case, the defence cannot be right and was therefore rightly dismissed.
17. On sentence, Section 234 of the Penal Code reads:-

“ Any person who unlawfully does grievous harm to another is guilty of a felony and is liable to imprisonment for life.”
18. The Appellant herein was sentence to serve 9 years in prison. He claims the said sentence is harsh and excessive. Nothing can be further from the truth given the circumstances of the offence. He was given a lenient sentence which this Court need not disturb.
19. The bottom line is that the Appeal lacks merit and is hereby dismissed.

DATED AND DELIVERED AT MERU THIS 27TH DAY OF JANUARY, 2026.

S.M. GITHINJI

JUDGE

Appearances:

Appellant present at Uruku Prison

Ms. Adhi for the State

