IN THE COURT OF
APPEAL AT KISUMU

(CORAM: ASIKE-MAKHANDIA, OMONDI & KIMARU, JJ.A.)

CRIMINAL APPEAL NO. 217 OF 2018

BETWEEN

JAMES WANYONYI.....APPELLANT

AND

REPUBLIC.....RESPONDENT

(Being an appeal from the judgment of the High Court of Kenya at Bungoma, (Muchelule, J.) dated 5th December, 2012

in

HCCRA No. 241 OF 2011)
****

JUDGMENT OF THE

COURT

[1] This is a second appeal arising from the conviction and sentence of the appellant, **James Wanyonyi**, by the Senior Resident Magistrate's Court at Webuye in Criminal Case No. 1506 of 2010. The appellant had been charged with the offence of grievous harm contrary to **Section 234** of the Penal Code. The particulars of the offence were that on 30th June 2010, at plot No.127 Kamukuywa-Bungoma Scheme, in Bungoma North District of the then Western

Province, the appellant

unlawfully grievously injured the appellant. He returned a plea of not guilty and his trial soon thereafter ensued.

[2] During th**e** trial, the complainant, **Robert Masai Sioni (PW1)**, stated that on 30th June 2010, he encountered the appellant, then serving as the area chief, demarcating a parcel of land belonging to his father. Apparently, his brother, Phillip Namasaka Sioni had sold one acre of it to Rhoda Lohande Osuka, deceased for Kshs.500,000/-. However, Phillip Namasaka Sioni was now claiming that on the ground the parcel was more than the acre that he had sold and wanted to be paid Kshs.21,000/- more. This is the dispute that had brought the appellant, the parties and a surveyor to demarcate the acre sold from the entire parcel of land. When the complainant came to the scene, he demanded to know who had given the appellant authority to resurvey the land. The appellant in response pricked his left eye with a stick, causing him an injury. PW2, Wycliff Chipsir, corroborated this account, stating that he was at the scene and witnessed the appellant prick the complainant's eye and later assisted him to hospital. PW3, Harun Munyigwa, also saw the appellant injure PW1's eye during the confrontation at the scene. PW4, a clinical officer, produced treatment notes and a P3 form confirming injury to the complaint's left eye, which

he classified as maim. PW5, the investigating officer, testified that he

received the complainant's report, recorded statements, and thereafter arrested and charged the appellant with the offence.

[3] In his defence, the appellant gave sworn testimony and categorically denied the offence. He explained that on the material day he was present on the disputed parcel of land to oversee a resurvey following disagreements between the vendor and the purchaser. The complainant soon arrived and began quarrelling him, but at no point did he assault or injure him. To support his account, the appellant produced documentary evidence, including a land sale agreement and minutes of a meeting held prior to the resurvey, which confirmed the legitimacy of the exercise.

[4] The appellant also called two witnesses in support of his defence, who were also present at the scene and who all stated that they did not witness any assault by the appellant on the complainant and confirmed that the complainant arrived after the resurvey had commenced. Their evidence was consistent with the appellant's testimony and sought to demonstrate that the prosecution witnesses had either exaggerated or fabricated the incident. Taken together, the defence case was that the appellant was lawfully performing his duties as area chief, that the complainant's allegations were unfounded, and that the

documentary

and oral evidence presented by the defence cast serious doubt on the

prosecution’s version of events.

[5] The trial court, after evaluating the evidence, found that the prosecution had proved its case beyond reasonable doubt. The court held that the complainant’s testimony was credible, corroborated by eyewitnesses and medical evidence, and that the appellant’s defence did not displace the strong prosecution’s case. The appellant was consequently convicted of grievous harm and sentenced to fifteen months’ probation.

[6] Dissatisfied, the appellant lodged an appeal in the High Court of Kenya at Bungoma. The first appellate court upon re-evaluating the evidence tendered in the trial court, dismissed the appeal holding that PW1’s evidence was consistent, corroborated by other witnesses and medical records, and that the trial court properly convicted the appellant. The court found no merit in the grounds of appeal raised and upheld both the conviction and sentence.

[7] The appellant, still dissatisfied, lodged this second appeal in this Court. His grounds of appeal are that the first appellate court erred in law in: upholding the conviction when the ingredients of the offence were not proved; failing to re-evaluate and reconsider the

evidence and

draw its own conclusions.

[8] The appeal was heard by way of written submissions. When called out, the appellant was represented by **Mr. Murunga,** learned counsel, while **Mr. Mwaniki**, learned Assistant Director of Public Prosecutions appeared for the respondent.

[9] Counsel for the appellant submitted that the first appellate court erred in law and fact by upholding the conviction when the ingredients of the offence were not proved beyond reasonable doubt. He similarly argued that the same court failed to independently re-evaluate the evidence and instead merely repeated the conclusions of the trial court. He further contended that the court neglected to make its own independent findings and draw proper conclusions, relied on indirect and contradictory evidence, and wrongly held that the prosecution had proved its case beyond reasonable doubt.

[10] Citing **Gatirau Peter Munya v. Dickson Mwenda Kithinji & Others [2014] eKLR**, counsel submitted that material inconsistencies in the prosecution's case fatally undermined the appellant's conviction. He pointed to contradictions between the treatment notes and the P3 Form regarding the time of treatment and the date of completion of the medical report. He argued that the Clinical Officer's testimony classified the injury as "harm,"

whereas the P3 Form described a

collapsed eyeball and corneal perforation, creating a misalignment

between the offence under **Section 234** and the actual medical evidence. He further submitted that PW5 and the complainant testified that the P3 Form was issued on 7th July 2010, yet the Clinical Officer stated that it was completed on 6th September 2010, raising questions about authenticity and reliability of such evidence.

[11] Counsel reverted to the defence witnesses who were all present at the scene and who all denied that any assault occurred involving the complainant and the appellant. He contended that the trial court itself acknowledged that the defence was plausible nonetheless convicted him, thereby occasioning a miscarriage of justice. He argued that the inconsistencies in medical documentation, witness testimony, and the framing of the charge collectively undermined the prosecution's case, and the trial court's disregard of these contradictions tainted the appellant's conviction. In conclusion, counsel submitted that the conviction was unsafe and the sentence unlawful, and that the first appellate Court erred in upholding both. He therefore prayed that this Court allows the appeal, quashes the conviction and sets aside the sentence.

[12] In opposing the appeal, counsel for the respondent submitted that the appellant was properly convicted and sentenced by the trial court

for the offence charged. Counsel emphasized that the instant appeal

raised issues of fact rather than law which this Court as a second appellate court has no jurisdiction to interrogate. To counsel, the alleged discrepancies in the record, specifically relating to the date and time of treatment as indicated in the treatment notes and the P3 Form were all matters of fact. Counsel noted further that these same contradictions were raised before the first appellate court, which considered them and found them immaterial or inconsequential.

[13] Counsel relied on the principle set out in **Twehangane Alfred v Uganda [2003] UGCA 6** that not every contradiction warrants rejection of evidence. Only grave contradictions that go to the root of the case and remain unexplained may undermine a conviction, while minor inconsistencies that do not affect the substance of the prosecution's case can be disregarded. Counsel submitted that the contradictions raised by the appellant were minor and immaterial, and both the trial court and the High Court were correct in rejecting them. It was submitted that questions of the veracity or admissibility of medical documents ought to have been raised before the trial court, and that the first appellate Court correctly rejected those protestations.

[14] Counsel further submitted that the standard of proof required

in criminal cases is proof beyond reasonable doubt, as was laid out in

DPP v Woolmington [1935] UKHL 1 and reaffirmed in **Miller v**

Minister of Pensions [1947] 2 All ER 372. She emphasized that proof beyond reasonable doubt does not mean proof beyond all possible doubt, but rather a high degree of probability sufficient to exclude fanciful possibilities.

[15] In conclusion, counsel urged this Court to uphold the findings of the trial as well as the first appellate courts, and dismiss the appeal in its entirety.

[16] In considering this appeal, we remind ourselves at the outset of our duty as a second appellate court seized of this appeal. **Section 361(1)(a)** of the Criminal Procedure Code limits our jurisdiction strictly to consideration of matters of law only. This position has been consistently affirmed in numerous authorities of this Court. In **Chemagong v Republic [1984] KLR 611**, for instance, this Court stated that:

> ***"A second appeal must be confined to points of law and this Court will not interfere with concurrent findings of fact arrived at in the two courts below unless it is based on no evidence."***

[17] This principle will guide our approach to this appeal, particularly given that both the trial and first appellate courts reached concurrent conclusions on some of the issues raised in the grounds of appeal.

[18] From the record, the submissions of counsel and the law, the issues of law, that we discern for our determination are whether: the offence of grievous harm was proved beyond reasonable doubt; the alleged contradictions in the prosecution's evidence were material enough to vitiate the conviction; and whether the first appellate court properly discharged its duty in re-evaluating the evidence.

[19] On the first issue, the trial court found that the complainant's testimony was credible, corroborated by two eyewitnesses and supported by medical evidence. The first appellate court, upon re-evaluation, upheld that finding. **Section 234** of the Penal Code defines grievous harm as harm amounting to maim or permanent injury to health or an organ. The medical evidence classified the injury to the complainant's left eye as maim, which falls squarely within the statutory definition. In **Nzuki v Republic [1993] KLR 171**, this Court emphasized that proof of grievous harm requires evidence of serious or permanent injury.

[20] In the present case, the complainant lost the use of his left eye, a permanent injury. It is common ground that the appellant was at the scene of crime. Indeed, he says so in his defence. Even his own witnesses confirmed the fact. The only point of departure is that

the

appellant denied assaulting the complainant as alleged. However, the

appellant conceded to the fact that there was an altercation between the complainant and himself. We doubt just like the trial court that the complainant and his witnesses would set out to deliberately frame the case against the appellant. What did they stand to gain, if one may ask! Could the complainant have gone to the extent of injuring himself in the eye merely to ensnare the appellant! In the event then, the two courts below came to concurrent finding that indeed the appellant assaulted the complainant. We have no reason to depart from that finding. All in all, therefore, the offence charged was proved against the appellant as required in law.

[21] On the second issue, the appellant pointed to inconsistencies between the treatment notes and the P3 Form regarding the time of treatment and the date of completion of the medical report. As correctly submitted by counsel for respondent, this is not really a matter of law but fact which we are barred from interrogating. Nonetheless both the trial and first appellate courts considered these discrepancies and found them immaterial. The law is that not every contradiction will vitiate a conviction. **Section 382** of the Criminal Procedure Code provides that no finding shall be reversed on account of an error or irregularity unless it has occasioned a

failure of justice.

[22] In **Twehangane Alfred v Uganda (supra)**, the principle was restated that minor contradictions which do not affect the substance of the prosecution case can be disregarded. Similarly, in **Joseph Maina Mwangi v Republic [2000] eKLR**, this Court held that discrepancies must be fundamental to create doubt as to the guilt or otherwise of the accused. In the present case, the contradictions did not go to the root of the offence, and the concurrent findings of the two courts below that they were immaterial cannot be faulted.

[23] On the third and last issue, , it is trite that the first appellate court is required to re-evaluate the evidence tendered in the trial court afresh and draw its own conclusions, while bearing in mind that it did not see or hear the witnesses and give due allowance. This duty was articulated in **Okeno v Republic [1972] EA 32**. In the present case, the first appellate Court expressly stated that it had re-evaluated the record and was satisfied that the trial court's findings were sound. We are also aware that there is no set format for re-evaluating or reviewing the evidence. Each court is therefore left to its own style in that regard. However, what is important is that re-evaluation must be self-evident. Our review of the record leaves us in no doubt at all that the first appellate court did a

sterling job in this regard.

[24] In light of the foregoing, and bearing in mind the concurrent findings of fact by both the trial and the first appellate courts, which were based on credible evidence, we find no error of law that would warrant interference by this Court. The appeal is accordingly dismissed in its entirety.

Dated and delivered at Kisumu this 13th day of February, 2026.

ASIKE-MAKHANDIA

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JUDGE OF APPEAL

H.A. OMONDI

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JUDGE OF APPEAL

L. KIMARU

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JUDGE OF APPEAL

I certify that this is a
true copy of the original

DEPUTY REGISTRAR