



**Obanga alias Gitoyo v Republic (Criminal Appeal E102 of 2025)
[2026] KEHC 1789 (KLR) (18 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 1789 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL E102 OF 2025
DR KAVEDZA, J
FEBRUARY 18, 2026**

BETWEEN

HASSAN OBANGA ALIAS GITOYO APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal against the original conviction and sentence delivered by Hon. S. Temu (S.P.M) on 26th March 2025 at Kibera Chief Magistrate’s Court Criminal Case No. E.1255 of 2024 Republic vs Hassan Obanga alias Gitoyo and another)

JUDGMENT

1. The appellant was jointly charged with another not before this court and after a full trial convicted for the offence of robbery with violence on count I, contrary to section 296(2), and grievous harm contrary to section 234 of the Penal Code. He was sentenced to serve twenty (20) years imprisonment. In count II, the appellant was charged with the offence of grievous harm contrary to section 234 of the Penal Code. The trial court however failed to analyse the evidence on Count II, and did therefore not make any findings.
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 complained that the sentence imposed was unlawful. He urged the court to quash his conviction and set aside the sentence imposed.
3. This being a first appeal, it is the duty of this court as the first appellate court, to reconsider, re-evaluate, and re-analyse the evidence afresh and come to its conclusion on that evidence. The court should however bear in mind that it did not see witnesses testify and give due consideration for that. (See Okeno v Republic [1972] EA 32).



4. PW1, Megan Colles Abulwa, testified that on 25th May 2024 at about 5.40 am, while on his way to work, he was accosted by three men. Two were ahead of him and one behind. As he passed one of them, the words “rada safi” were uttered. He turned and saw the assailant armed with a knife. He was stabbed on the buttocks and his mobile phone was stolen. Another assailant aimed a knife at his head, which he blocked with his left hand, sustaining a cut on the thumb, and was also struck on the right side of the head. He stated that street lights were on and he was able to identify the appellant, whom he knew by the nickname Obanga. He reported the incident to his employer, was taken to hospital, and later reported to Kibra Police Station. Three days later, he was called to the station and identified the assailants.
5. On cross examination, PW1 stated that they lived in the same area as the assailants, that lighting was adequate, and that he gave the police the nicknames of the attackers. He was referred to Kenyatta National Hospital due to the seriousness of his injuries.
6. PW2, Godfrey Madewa, testified that PW1 knocked at his gate bleeding. PW1 informed him that he had been attacked and needed medical attention. PW2 took him to hospital where he was stitched on the buttocks, head and hand. The injury to the finger could not be stitched. They later reported the matter at Kibra Police Station and obtained a P3 form. PW2 stated that they were later summoned to the police station and positively identified the assailants.
7. During cross examination, PW2 stated that the assailants were well known in the area and frequently terrorised residents. An identification parade was conducted on 29 May 2024, during which PW1 and his father identified the appellant.
8. PW3, Enos Abulwa, the complainant’s father, corroborated the evidence of PW1 and PW2. He stated that he knew the assailants from the area and recognised them at the police station.
9. PW4, Dr Erick Kanjama of Mbagathi Hospital, produced the medical documents. He testified that PW1 had sustained cut wounds on the head, deep cuts on the back and buttocks, and a deep infected cut on the left thumb with dislocation. The injuries were caused by a sharp object and were classified as harm. The treatment notes were consistent with the P3 form.
10. On cross examination, PW4 stated that the injuries were caused by sharp force trauma and that PW1 was placed on medication to prevent infection.
11. PW5, PC John Mutegi, testified that upon receiving information, police officers traced one suspect to his house where he was found hiding under a bed and arrested.
12. PW6, CPL Oleu Ngerechi, corroborated the evidence of the earlier witnesses. He stated that no identification parade was conducted by him since the complainant already knew the assailants.
13. When placed on his defence, the appellant maintained his innocence. He stated that on the material day, he was arrested, the officers forcibly entered his house, and he was taken to the police station and charged with the offences. This was corroborated by DW3 Kadisa Ruseka who lived with him for about four years.
14. The appeal was canvassed by way of written submissions by the parties, which have been duly considered. The key ingredients for a robbery with violence charge are found in section 296(2) of the Penal Code. It provides as follows-

“if the offender is armed with any dangerous or offensive weapon or instrument, or is in company with one or more other person or persons, or if, at or immediately before or



immediately after the time of the robbery, he wounds, beats, strikes or uses any other personal violence to any person, he shall be sentenced to death”.

15. The first ingredient of the offence of robbery with violence is proof of theft. PW1 testified that his Neon Ultra mobile phone, valued at Kshs 27,000, was stolen during the attack. This evidence was supported by the purchase receipt produced by PW5, the investigating officer, and was further corroborated by the medical evidence tendered through PW4. The element of theft was therefore proved.
16. The second ingredient is the use or threat of violence at, immediately before, or immediately after the theft. PW1 testified that the appellant was armed with a knife and inflicted cuts on his left hand and the right side of his head. The assault occurred in the course of the robbery. The P3 form and medical testimony confirmed deep cut wounds on the head, buttocks, back and hand, some of which required stitching. The injuries were assessed as grievous harm, clearly establishing the use of actual violence.
17. The third ingredient requires proof that the offender was in the company of one or more persons. PW1 was categorical that the appellant acted together with two other assailants who escaped. This evidence was not challenged and sufficiently proved that the robbery was committed by more than one person.
18. The final ingredient concerns the identification of the offender. PW1 positively identified the appellant as the person who stabbed him. He stated that there was adequate street lighting at the scene and that he knew the appellant prior to the incident. PW2 and PW3 also placed the appellant at the scene, thereby reinforcing the reliability of the identification.
19. The Court has also considered the appellant’s defence, in which he denied involvement and alleged mistaken identity. That defence was a mere denial and did not displace the consistent, cogent and corroborated prosecution evidence. I therefore find that all the elements of the offence of robbery with violence were proved beyond reasonable doubt. The conviction in Count I was safe and is hereby upheld.
20. The trial court fell into error by failing to analyse the evidence in respect of Count II, being the offence of grievous harm contrary to section 234 of the Penal Code. Section 234 provides as follows:

“ Any person who unlawfully does grievous harm to another is guilty of a felony and is liable to imprisonment for life.”
21. Grievous harm is defined under section 4 of the Penal Code to include any harm which amounts to a maim or seriously and permanently injures health. The evidence on record clearly established this element. PW1 sustained deep cut wounds to the head, back and buttocks, and a severe cut on the left thumb with dislocation. PW4, the medical officer, confirmed that the injuries were caused by a sharp object and classified them as grievous harm in the P3 form.
22. PW1’s testimony placed the appellant at the scene and identified him as the person who inflicted the injuries using a knife. This evidence was consistent, direct and corroborated by medical findings. The injuries were unlawful and intentional, and no justification was offered.
23. I therefore find that the prosecution proved the offence of grievous harm beyond reasonable doubt. The omission by the trial court notwithstanding, the appellant is guilty as charged on Count II.
24. In count I, the appellant was sentenced to serve twenty (20) years imprisonment. The sentence imposed in Count I was lawful, proportionate and based on sound exercise of discretion. The trial court considered the pre-sentence report and the aggravating circumstances surrounding the offence, and there is therefore no basis for interference with the sentence in Count I.



25. As earlier observed, the trial court failed to analyse the evidence and to pronounce itself on sentence in respect of Count II for the offence of grievous harm. Having found that the offence under section 234 of the Penal Code was proved beyond reasonable doubt, it is incumbent upon this Court to impose an appropriate sentence.
26. In determining sentence for Count II, the Court has considered the nature and extent of the injuries sustained, the circumstances under which the offence was committed, and the fact that the appellant is a first offender. While section 234 prescribes a severe maximum penalty, the sentence must remain proportionate.
27. In the circumstances, the appellant is hereby sentenced to ten (10) years' imprisonment on Count II, to run concurrently with the sentence of twenty (20) years imprisonment imposed in count I from 31st May 2024 the date of his arrest pursuant to section 333(2) of the Criminal Procedure Code, Cap 75 Laws of Kenya.
28. Save for the imposition of sentence on Count II, the appeal is otherwise dismissed.

Orders accordingly

JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 18TH DAY OF FEBRUARY 2026

D. KAVEDZA

JUDGE

In the presence of:

Appellant Present

Mr. Mutuma for the Respondent

Karimi Court Assistant.

