

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NANYUKI

CRIMINAL APPEAL CASE NO. E016 OF 2024

EMMANUEL RUTO.....

.....APPELLANT

VERSUS

REPUBLIC.....

.....RESPONDENT

(From original Conviction and Sentence in Nanyuki MCCRC

No. E387 of 2023 - Hon. B. Mararo - SPM)

J U D G M E N T

1. The Accused, **EMMANUEL RUTO** was charged with **Grievous harm** contrary to **Section 234 of the Penal Code**. The particulars of the offence being that on the 27th day of January 2023 at 2200 hours at Likii area in Lakipia East Sub-County, Laikipia County within the Republic of Kenya unlawfully did grievous harm to Juliet Nyawira Kinyua. He faced a 2nd count of resisting arrest contrary to **Section**

103(a) of the National Police Service Act 2011. The particulars being that on the 28th day of January 2023 at Likii area in Laikipia East Sub County, Laikipia County in the Republic of Kenya resisted arrest by P/No. 223030 CPL Geoffrey Maina and P/no. 119753 PC Ian Muteithia by refusing to be handcuffed, struggling and escaping from officers in their due execution of duty.

2. He was tried, convicted and sentenced to 10 and 5 years respectively which sentences were to run concurrently.

3. Aggrieved by the conviction and sentence, the Appellant lodged a petition of appeal based on the following grounds;

1. That the learned trial magistrate erred in matters of law and facts by convicting the appellant on a case that was not proved beyond reasonable doubt.

2. That the trial magistrate erred in matters of law and facts by convicting the appellant by relying on medical evidence that did not prove conclusively that PW1's miscarriage was occasioned by assault.

3. That the learned trial magistrate erred in matters of law and facts by convicting to note that the Hymen was old broken and no lacerations.
4. That the learned trial magistrate erred in matters of law and facts by convicting the appellant by relying on the evidence of the investigating officers theory of being assaulted by appellant yet the proceedings prove a matter of pure accident.
5. That the learned trial magistrate erred in matters of law and facts by meting out a manifestly harsh and excessive sentence of 15 years without considering the provision of Section 333(2). CPC on time appellant spent in custody.
4. The appeal was canvassed by way of Appellant's written submissions.
5. The gravamen of the Appellant submissions is that the evidence adduced was inadequate as the prosecution relied on the evidence of PW1 which was not corroborated. Further, that this was a domestic quarrel between a husband and wife which was escalated to grievous harm.

- 6.** He asserts that the charges were a conspiracy to punish him for infidelity.
- 7.** The Appellant asserts that the trial court failed to consider the time spent in custody when passing sentence.
- 8.** The Respondent set out the ingredients of the offence of grievous harm. Counsel analysed the evidence adduced and concluded that the charge of grievous harm was proved to the required degree.
- 9.** On the 2nd Count, it is submitted that the evidence of the police officer who went to arrest the Appellant clearly proved that the Appellant resisted arrest. The necessary mens rea was proved and the conjunctive elements in a charge of resisting arrest were all proved and the evidence was consistent and collaborative. It was sufficient to support the conviction.
- 10.** On sentence, it is submitted that the same was not only lawful but lenient.
- 11.** This being a first appeal, this Court is obligated to re-evaluate and re-analyse the evidence tendered before the

trial court and reach its own independent conclusions, while bearing in mind that it neither saw nor heard the witnesses. It is thus necessary to sum up the evidence at trial and which is as follows.

12. The complainant (PW1) testified that she had been in a romantic relationship with the Appellant. A quarrel arose between them after she confronted him regarding his involvement with another woman.

13. On 27/1/2023, the disagreement escalated when the Appellant forcefully went to PW1's house and slapped her and she fell. He continued pounding her with blows and kicked her. He then left. PW1 testified that the Appellant became violent and assaulted her. At the time of the assault, PW1 was 12 weeks pregnant with the Appellant's child. She later suffered a miscarriage as a result of the injuries sustained.

14. PW3, a police officer went to arrest the Appellant at Likii after the report of assault was made. The Appellant resisted arrest and in the scuffle, Pw2 fell down and broke his leg. He was taken to hospital. The Appellant fled from town and

put off his phone and it is not until 19.3.23 that he resurfaced and was arrested.

15. PW4, a clinical officer, produced a P3 form and treatment notes. The medical evidence confirmed swelling the left eye and vaginal bleeding. She suffered a miscarriage at approximately 12 weeks' gestation and the degree of injury was assessed as grievous harm.

16. PW4 also produced a P3 form filled in respect of injuries suffered by PW2 on his leg. The degree of the said injury was grievous harm.

17. In his defence, the Appellant gave a sworn statement denying assaulting the complainant. He alleged that the complainant fabricated the charges out of jealousy and bitterness over his alleged involvement with another woman. He asserted that no one saw him in the act.

18. The issues that arise for determination are:

- a) Whether the offence of grievous harm was proved beyond reasonable doubt.
- b) Whether reliance on the complainant's evidence

was safe.

c) Whether the Appellant's conduct after the incident corroborated guilt.

d) Whether the sentence was lawful and appropriate.

19. Section 4 of the Penal Code defines grievous harm as harm which amounts to maim or dangerous harm, or seriously or permanently injures health.

20. The medical evidence confirmed loss of pregnancy at 12 weeks and serious injury to the left eye. A miscarriage resulting from physical assault constitutes serious injury to health.

21. From the medical evidence on record, the injuries sustained by PW1 were classified as grievous harm. The medical evidence was not shaken on cross-examination.

22. I am satisfied that the nature and extent of injury met the legal threshold for grievous harm.

23. On causation, the evidence linking the Appellant to the offence is the direct evidence of PW1. She narrated in great detail the beatings she received from the Appellant. The Appellant was someone known to her, a lover but with whom

she had quarreled earlier over involvement with another woman.

24. This evidence is given credence by the medical evidence produced which confirms PW1 was injured.

25. The rebuttal evidence is that the charges are as a result of jealousy as the Appellant had gotten involved with another woman. Such a defence may in some instances be plausible in circumstances like these where the prosecution's evidence is not cogent. But not in this case. PW1 suffered serious injuries as confirmed by the medical evidence. She is firm that the injuries were as a result of an assault by the Appellant.

26. The law does not prohibit reliance on the evidence of a single witness provided the court warns itself and is satisfied that the evidence is credible.

27. In the present case, the assault arose from a domestic quarrel between persons well known to each other. This was not a case of mistaken identity.

28. The complainant's testimony was internally consistent and materially corroborated by medical evidence showing injuries consistent with her narration.

- 29.** Evidence was tendered that when police attempted to arrest the Appellant, he violently resisted, leading to injury on one of the officers before escaping. He then switched off his phone and fled town for nearly two months until 19/3/2023.
- 30.** Flight from justice is not conclusive proof of guilt, but it is relevant conduct from which an inference may be drawn. The Appellant offered no explanation for his disappearance and his conduct is consistent with a consciousness of guilt and lends further support to the prosecution case.
- 31.** The above evidence proves beyond a shadow of doubt that the Appellant resisted arrest and bolsters the prove of the assault causing greivous harm. It is worthy of note that the Appellant makes no explanation of his flight from the seat of justice in the intervening period between 28.1.23 and 19.3.23.
- 32.** The Appellant's defence was a bare denial coupled with allegations of jealousy. No evidence was tendered to show fabrication or malice. The defence did not displace the strong medical corroboration and the credible account of PW1.

- 33.** In my re-evaluation of the evidence, am satisfied that the trial court properly rejected the defence.
- 34.** The offence under section 234 of the Penal Code attracts a maximum sentence of life imprisonment and the offence of resisting arrest attracts a sentence of a fine of 1 million shillings or 10 years imprisonment or to both fine and imprisonment.
- 35.** The assault resulted in a serious eye injury and loss of pregnancy. The violence was deliberate and unjustified. Resisting arrest is a serious matter as it is a direct affront to the rule of law and the administration of justice. The trial court did not deviate from the established principles of sentencing. Relevant matters were considered. No irrelevant matter was considered. The sentences imposed were within the law and cannot be said to be manifestly excessive in the circumstances.
- 36.** On the claim that the remand period was not considered, the record shows the contrary. The court indicated that it had considered this aspect in sentencing.
- 37.** With the result that the appeal herein lacks merit and is dismissed in its entirety.

Dated signed and delivered this 18th day of February,
2026.

A.K. NDUNG’U

JUDGE

ORIGINAL JUDGMENT