



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

HC CRIMINAL APPEAL CASE NO. E007 OF 2025

TIMOTHY KALERA.....APPELLANT

VERSUS

THE

REPUBLIC.....RESPONDENT

JUDGMENT

TIMOTHY KALERA, the appellant herein, was charged in the lower court with the offence of grievous harm contrary to Section 234 of the penal code.

The particulars of this offence are that on 2nd day of June 2022 at around 16:00 hours at Cheene Village, Amugaa Location, in Tigania Central Sub-county, within Meru County, the appellant willfully and unlawfully did grievous harm to Ismael Mutwiri.

The prosecution case is that on 23rd June, 2022 at about 2.00pm, the complainant who offered evidence as Pw-1, was heading to

his farm to plant bananas. He passed by his cousin's home, namely Zipporah.

Zipporah requested him to get her some cassavas from the farm. The complainant went to the farm and to his surprise he found his immediate neighbour, who is the appellant herein, in the farm uprooting cassava. The complainant asked him why he was uprooting the cassavas. He did not however answer. He instead left briefly and returned armed with a machete and a spade. The complainant and the appellant were not in good terms. When the complainant saw him armed he ran away to his cousin's home. While in the home compound, he slipped and fell to the ground. The appellant who was pursuing him caught up with him. He raised the machete to cut the complainant. The complainant raised his left hand to parry the blow. In the process his left index finger was cut and almost severed. His cousin who witnessed the attack asked the appellant whether he was out to kill him. The appellant at that point retreated and vanished.

Zipporah administered first aid by dressing the injured finger. She then sought a motorcycle which took them to Mikinduri Police Station where they reported the case. They were issued with a P.3 form and proceeded to Mikinduri Sub-county Hospital.

Dr. Absalom Wambua, who gave evidence as Pw-2 indicated that the complainant was examined and treated on 23/6/2022 at 4.00pm. The left hand was bleeding profusely as the left index finger had a cut, and it was dangling almost falling off. The finger could not be salvaged. It was severed and the wound stitched.

The injury was inflicted by a sharp object. The degree of injury was assessed as grievous harm. The P-3 form was filled to the said effect.

The Police investigated the case, arrested the appellant and had him charged for the said offence.

The appellant gave unsworn testimony in his defence. He alleged that on 23/6/2022 he was at home and never saw the complainant. He has never argued or fought with him. He denied the offence. He further alleged that he was fixed by the complainant as he had his debt which was to be paid in December but was not. He suggested that the complainant may have been injured by someone else and bribed the Police and the I.O to fix him.

The trial court evaluated the charge and the evidence adduced, and found the appellant guilty of the offence charged with. He was convicted of it and sentenced to serve 10 years imprisonment.

Dissatisfied with the said conviction and sentence, the appellant preferred an appeal to this court on the grounds that:-

- 1) The trial Magistrate relied on the evidence of a single witness without warning herself of the danger of relying on such evidence.
- 2) The trial Magistrate misapprehended the evidence adduced and thus arrived at a wrong conclusion.

3) The trial Magistrate did not take into account the inconsistencies in the prosecution case which shows the charges were framed up.

The appeal was canvassed by way of written submissions of which only the Respondent filed.

The first appellate court's duty as was held **in Okemo -Vs- Republic [1972] EA 32**, is to re-evaluate the evidence, analyse it afresh and draw its own conclusions, while remembering that it did not have the advantage of seeing or hearing the witnesses testify.

The offence of grievous harm is created by **Section 234 of the Penal Code (Cap 63 Laws of Kenya)**. It states:-

"Any person who unlawfully does grievous harm to another is guilty of a felony and is liable to imprisonment for life"

So, in brief, the Prosecution must prove that the accused unlawfully did grievous harm. This leads to the next issue of what exactly is "grievous harm".

Definition of grievous harm is given under **Section 4 of the Penal Code** as follows:-

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

The given elements under this Section are alternate, and proof of any one of them would suffice for the offence of grievous harm.

It therefore follows that the three ingredients for the offence that need be established beyond reasonable doubt are;

- 1) The complainant sustained grievous harm.
 - a) The harm was caused unlawfully.
 - b) The Appellant caused or participated in carrying the harm (causation+ identity).

On the first issue, in determining the degree of injury sustained by the victim, the Court normally relies heavily on the evidence of a medical expert who makes the treatment notes and fills the P-3 form. The court however is not bound by the medical evidence alone as it may make its finding based on all the available evidence.

In this case, the complainant stated his left index finger was cut, which led to its amputation. This shows the cut was severe and led to permanent scar and disability. I do agree with the medical officer's findings that he suffered grievous harm.

The evidence shows that the victim found the assailant in his (victim's) land, uprooting cassava. When the victim asked him why he was doing it he did not answer but left briefly only to return with machete and a spade. When the victim sensed danger and run away, the assailant charged after him and caught up with him where he had fallen in his cousin's home compound. Its then he attacked him causing him grievous harm. There's no lawful

justification to the said attack. It was not in self-defense, defence of property or by accident. It was premeditated.

On recognition of the appellant as the culprit, the incident happened during the day at 2.00pm. The visibility was clear; the appellant being an immediate neighbour to the victim was well known to him. He had ample time to see the appellant as he questioned him as to why he was uprooting his cassava, and after he left and returned armed with a machete and a spade. He could not have made a mistake of him. The available evidence is of recognition as opposed to that of identification and as was held in the case of **Anjononi & Others -Vs- Republic [1980] KLR 59**, the evidence is more satisfactory, more assuring, and more reliable than identification of a stranger.

The appellant's defense amounts to a sham. He uses the word "may" which shows is founded on guess work. He does not disclose how he was owed money by the victim and how much. It does not also make sense that the victim would have bribed Officers to fix the appellant, rather than use the cash to repay the amount allegedly owed. The evidence shows that the victim had no cause to fix the appellant. The defence is also an afterthought as the issues raised were not covered during cross-examination of the victim and the Police Officer. The defence was rightly dismissed.

Given the foregoing considerations, the appellant was rightly convicted of the offence of grievous harm.

On sentence, the offence carries a maximum of life imprisonment.

A trial court hears the witnesses, observes the accused, considers mitigation, and therefore is best suited to decide the appropriate sentence.

In **Wanjema -Vs- R [1971] EA 493**. The court of Appeal for East Africa held that an appellate court will not interfere with the exercise of discretion by a trial court in sentencing unless it is evident that the court acted on a wrong principle, overlooked a material factor, or the sentence is manifestly excessive or manifestly lenient.

In this case, the appellant was sentenced to 10 years imprisonment. I find no cause, given the circumstances, to interfere with it.

The bottom line is that the appeal lacks merit and is hereby dismissed.

Judgment read and signed in the open court this 24th February, 2026.

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Hon. Justice Stephen Githinji

In the presence of:-

1. Appellant at Uruku Prison
2. Ms. Adhi for the State

