

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

CRIMINAL APPEAL NO. E018 OF 2024

PATRICK NJIRAINI RIBUI.....
APPELLANT

-VERSUS-

REPUBLIC.....RESPONDENT

(Being an appeal against the conviction and sentence by Hon. P. Agade, PM, in Kigumo SPM Criminal Case 410 of 2020 delivered on 8th February, 2023)

JUDGEMENT

1. The appeal before this court was filed by the Appellant on 11th September 2024 challenging both the conviction and sentence delivered by the SPM's Court at Kigumo in Criminal Case NO.410 of 2020 on 8th February 2024.
2. The background to the case was that the Appellant, *Patrick Njiraini* alongside his co-accused *David Ngugi Njiraini* (the Appellant's biological son), was charged with the offence following offence of Attempted Murder contrary to Section 220(a) of the Penal Code, Count 1 with the Alternative of Grievous Harm contrary to Section 234 of the Penal Code. On Count II he was charged with Assault causing bodily harm contrary to Section 251 of the Penal Code.
3. Particulars were that on 8th July 2020 at about 2100 hours at Karinga Village of Muranga South Sub-County of Murang'a County, the Appellant together with his co-accused jointly and unlawfully attempted to cause the death of *Daniel Ndung'u Mburu* by attacking him with machetes, chopping off his left-hand finger, right-hand thumb and inflicting serious injuries on his forehead and left wrist. Both accused persons pleaded Not guilty to all

charges following which the matter proceeded to full hearing whereby the prosecution presented its case and the accused were heard in defence. At the conclusion of the trial, the Court adjudged the accused persons guilty in respect of Count I (attempted murder) and acquitted them on Count II (assault causing actual bodily harm). The trial Court sentenced the Appellant to imprisonment for a term of ten (10) years taking into account his previous criminal record whereas his co-accused and son *David Ngugi Njiraini* was sentenced to five (5) years imprisonment being a first offender.

4. The subject Appeal is premised on the grounds that the charge of attempted murder was meant to quieten the land tussle between the Appellant and the complainant Daniel Ndung'u Mburu, that there was linkage between Appellant's arrest and the events taking place at the locus in quo of the offence for which he was charged, the identification was carried out at night was not positive or watertight, that the police investigations were shoddy thereby negatively affecting the core root of the matter and lastly, that the prosecution's case was replete with contradictions, inconsistencies and discrepancies and the trial Court misdirected itself in entering the finding that the Appellant had a case to answer.
5. The Appellant subscribed to the position that the prosecution failed to link him to the attack perpetrated on the complainant (PW1). Furthermore, the trial Court relied exclusively on the evidence adduced by PW1 in convicting the Appellant whereas PW1 failed to demonstrate to the Court the source of light which enabled him to see the Appellant during the night of 8th July 2020 at around 9pm. Guidance was placed in the reasoning of the Court in **Republic v Turnbull (1971) QR 227** to buttress the foregoing submissions.
6. Further, the Appellant also cited decisions in **Bhatt v Republic [1957] EA 332 - 334 & 335; Sanjil Chattal v**

The State [1985] 39 WLR; and, **Daboh & Another v State [1977] 5SC 122 at 129** in support of the argument that the trial Court ought to have held that the prosecution failed to establish a case to answer against the Appellant.

7. The Respondent vide written submissions dated 16th July 2025 by Ms Manyal, (Prosecution Counsel) argued that the Appellant and his co-accused launched an unprovoked attack upon the complainant. It was also submitted that the Appellant in his defence failed to present any evidence to suggest self-defence, provocation or lawful excuse before the trial Court, hence the assault upon the complainant was unlawful.
8. It was submitted further that the land tussle between the Appellant and the complainant provides a credible motive for the attack upon the complainant as the Appellant's co-accused made two telephone calls to PW5 Sergeant Ouko and threatened "to do something" to the complainant in relation to the land dispute between them. On the issue of nexus between the Appellant's arrest and the attack upon the complainant, it was argued that the Appellant was arrested following the making of a report to the police by the complainant who identified the Appellant by name.
9. Regarding the issue of identification, the prosecution submitted that although the attack occurred at night, the complainant had a clear and sufficient opportunity to positively identify the appellant being known to him personally, by name and for several years. In addition, at page 99 of the trial proceedings, the trial Court noted that photographs taken at the crime scene confirmed the presence of sufficient lighting within the complainant's residence to allow for proper recognition of individuals. Guidance was placed in the dictum of the Court in **Anjononi & Others v Republic [1980] KLR 59** to anchor the preceding submissions. The prosecution refuted claims that its case before the trial Court was

riddled with contradictions and upheld the trial Court's finding that the Appellant had a case to answer.

10. This being a first appeal, the Court is required to re-evaluate the entirety of the evidence presented before the trial Court and reach its own conclusion on the same.
11. The Appellant's main contention in the instant appeal is that together with his co-accused who is also his son, he was framed by the complainant who instigated trumped-up charges against them in an attempt to quieten or bring to a halt an existing land-related dispute between the complainant on one hand and the appellant and his co-accused on the other hand.
12. The Court has carefully considered the impugned decision particularly, on pages 3, 4 and 5 therein which give the chronology of events during the night of 8th July 2020. On page 3-4 of the aforesaid holding, it is indicated that police officer *George Ouko* (PW6) received a phone call from the Appellant's co-accused, who sounded angry, demanding that he arrest the complainant otherwise the Appellant's co-accused would do something about the matter. Furthermore, on the same night of 8th July 2020 at around 9pm, police officer *George Ouko*, visited the complainant's house where he encountered a broken door, dripping blood stains, a human finger lying on the floor and a huge crowd about to set alight the houses belonging to the Appellant and his co-accused on account of the inhuman act which the two had perpetrated upon the complainant, namely attacking him with machetes and chopping off two of his fingers and wounding the complainant on the head.
13. From the preceding, it is clear that the attack upon the complainant on 8th July 2020 was witnessed by the complainant's wife and child and their neighbours. Furthermore, the police arrived at the scene of the crime promptly having been alerted of the same by the

Appellant's co-accused as well as the complainant who called the police moments prior to the attack.

14. It is also noteworthy, on the 9th July 2020, a day following the attack upon the complainant, the police on apprehending the Appellant and his co-accused noted blood stains on the clothes of both individuals. Furthermore, both accused persons on that day led the police to the police where they had hidden the machete used to cause injuries on the complainant. What is more, on the night of 8th July 2020, the Appellant and his co-accused emerged from their hiding place and surrendered to the police, following the burning down of their houses by an angry crowd which was baying for their blood.

15. Having painstakingly reviewed the entirety of the evidence supplied before the trial Court and the impugned decision, the Court is persuaded and satisfied that the trial Court applied the law soundly in convicting and sentencing the appellant to imprisonment for a term of ten (10) years for the offence of attempted murder. The Court is satisfied that the complainant and his wife were both well-placed to identify the Appellant and his co-accused as the two were their neighbours. Furthermore, the machete attack upon the complainant was preceded by threats and stone-throwing onto the complainant's house by the Appellant and his co-accused, activities which the accused persons had engaged in for a while prior to the incident.

16. Based on the above, this Court does not find any basis to disturb the holding of the trial Court as the same was based on the evidence adduced before it.

17. I therefore find that this appeal is unmerited and is hereby dismissed. The Appellant will continue to serve the remainder of his term of imprisonment.

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 5TH DAY OF MARCH, 2026.

HON. T. W. Ouya

JUDGE

For Appellant.....Patrick Njiriani Rubui (Present in person)

For Respondent.....Mwakio for state

COURT ASSISTANT.....Brian

ORIGINAL