



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KERUGOYA**

**CRIMINAL APPEAL NO. E008 OF 2025**

**CHARLES KAMAU KAIRIA.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

*[An appeal from the original conviction and sentence in Kerugoya criminal Case NO. E386 of 2024 delivered on 23/1/2025 by Hon. Grace Waithera, RM*

**JUDGMENT**

[1] The Appellant, being dissatisfied with the Judgement of (HON. GRACE WAITHIRA (RM)) dated and delivered on 23<sup>rd</sup> January 2025 in Kerugoya Criminal Case No E386 of 2024), Senior Principal Magistrate appeals to the High Court of Kenya against the entire Judgement, its Sentence and Conviction on the following grounds:

1. The trial magistrate erred in law and in fact in failing to take into account the material contradictions by the prosecution's witnesses.
2. The trial magistrate erred in law and in fact in failing to consider the evidence rendered by the Appellant when making its determination.
3. The trial magistrate erred in law and in fact in failing to consider and attach the necessary weight to the evidence adduced by the Appellant's witness.
4. The trial magistrate erred in law and in fact by failing to apply the required standard of proof.
5. The trial magistrate erred in fact and in law by taking into account immaterial and extraneous factors in making her determination.

6. The trial magistrate erred in fact and in law in failing to find that the Prosecution had not proven the link between the exhibits, more specifically the knife alleged to have been used in the commission of the offence by the Appellant and the Appellant.
7. The trial magistrate erred in law and in fact in failing to find the defence offered by the Appellant as of reasonable possibility and consistent with innocence.
8. The trial magistrate erred in law and fact in failing to find that the Prosecution had failed to sufficiently prove its case.
9. The trial magistrate erred in fact and in law by exhibiting obvious bias to the Appellant during the hearing.
10. That the trial magistrate erred in fact and in law in failing to take into account the mitigation by the accused.

### **Brief facts**

- [2] Charles Kamau Kairia has been charged with the offence of assault causing actual bodily harm contrary to Section 251 of the Penal Code. It is alleged that on 29<sup>th</sup> May 2024, at Kerugoya Kukuena Sacco Stage area in Kirinyaga central sub-county, within Kirinyaga county in the Republic of Kenya, jointly with others not before court, the accused willfully and unlawfully assaulted Geoffrey Githinji Nyaga, thereby occasioning him actual bodily harm.
- [3] The prosecution called 7 witnesses to testify in support of its case while the accused gave a sworn statement and called one witness.
- [4] On 23<sup>rd</sup> January, 2025 the accused was convicted. He was sentenced to 18 months in prison.

### **Prosecution case**

- [5] **PW1- Geoffrey Githinji Nyaga**, Kukuena Sacco's supervisor of Kukuena Sacco testified that on 29<sup>th</sup> May, 20124, he was at the stage when vehicles started to operate outside the stage. That morning, PW1 had marched out of the stage holding a placard that stated that they were not paying the county. He was on the frontline of the protests with Kiilu, Chege and Wa Mbaru. He heard someone stab him on the back.

He checked and saw that Kamau had stabbed him with a knife. He was taken to Kerugoya General hospital by Kiilu using a vehicle.

- [6] On cross-examination, he showed his bloodstained shirt. He insisted that Kamau stabbed him with a knife, dropped it and left.
- [7] **PW2- Peter Kiilu** a manager at Kukena Sacco said that saw the line man, PW1, running while bleeding. When he got to the office he fell down. He said he had been stabbed by Kamau. He took him to hospital in a Nissan. He had lost consciousness and his body was swelling. The OCS came and recorded a statement.
- [8] **PW3- Brian Mwangi Waweru** testified that on 29<sup>th</sup> May, 2024 they had arranged a strike as Kukena against the County Government. They were 5 members carrying placards and wanted to get out of the stage. While at Wahome Hospital, Kamau jumped and stabbed him. He punched him and he slid and fell. They told PW1 that kamau had stabbed him on the left side. Blood was dripping. PW2 took him to hospital.
- [9] **PW4- John Chege Ndegwa** a line manager of Kukena Sacco said that the manager told them to write placards and say they did not have faith in the County Government. They were 5 and others behind them. PW1 was in front of them. Kamau came and tried to touch him, then he slipped because it was raining. He took a knife and stabbed him on the back. He started to bleed profusely.
- [10] On cross-examination, he said that that the accused stabbed, PW1, and ran after him with a stone. He wanted to kill him. PW4 hit the stone and it fell.
- [11] **PW5- Hezron Macharia Maina**, a registered clinical officer testified that on 31<sup>st</sup> May, 2024, the OCS Kerugoya Police Station requested that PW1 be examined. He had a history of being assaulted by someone he knew who stabbed him with a knife and by a punch on 29<sup>th</sup> May, 2024 at about 9.00 am. His clothing, he had dirty clothes that were torn and were blood stained. He appeared in pain and sickly that day. He had a deep stab wound of 5 centimetres which was bleed near the spinal code. An X-ray was done which showed that he did not get internal injuries. He estimated that the injuries were fresh and were consistent with 30 minutes. They were assessed and were of harm degree. He filled the P3 Form and signed it on 31<sup>st</sup> May, 2024. He produced the P3 Form as P. exh1, treatment notes as P.Exh2 and X-ray as P.exh3.
- [12] **PW6- Peter Muchira** a matatu operator at Kukena Kutus said on the 29<sup>th</sup> May, 2024 they had a demonstration against the county. When they came out of the stage, they found taxi operator who were ferrying passengers to Kagumo at their stage.

Kamau started fighting. He hit Githinji two blows and he fell down. He saw blood and knew that he had been stabbed. He was stabbed on the left side from the back and they took him to the hospital.

- [13] **PW7 – CPL Josphat Nyaga** the investigating officer testified that he went to the scene and recorded witness statements. The drivers were demonstrating against the county government to prevent the taxis from taking passengers outside the stage. They had placards written “no paying the county.” When they got near ACK Church, they met taxi drivers. One of them Charles was leading them, he hit Geoffrey. When he looked back, Charles stabbed him with a knife on his back. The Sacco drivers were took a photo of the knife before the taxi drivers took it way. He took a photo of the knife and the blood stained clothes. He charged the accuse with assault causing actual bodily harm. He produced as exhibits, photos of the knife, P. exh3, P. exh 4 blood stained vest and p. exh 5 shirt.

#### **Defence case**

- [14] **DW1- Charles Kamau Kairia the accused** gave a sworn statement and confirmed that on the material day, operators of Kukena Sacco held demonstrations against the taxis stage. The taxi drivers were caught unawares as they had no prior knowledge of the protests. The event took place at Kagumo taxi. He said that another person came with a knife. He did not have a stone and did not hit PW1. The accused claimed that his car was first in line and was ready to take off when the protests began. He testified that the demonstrators had blocked all cars including his own and even destroyed it.
- [15] On cross-examination, he said that he did not stab the complainant.
- [16] On re-examination, he said that they had beat him up and he reported the matter. They then turned on him and beat him up.
- [17] **Dw2- Justin Wachira Muchiri** also a taxi driver confirmed that on the material day, they were working as usual, when they were interrupted by the Kukena Sacco operators’ protests. Over 50 Sacco operators blocked access to their taxis and tried to protect their taxis. Even the accused, Kamau, tried to protect his taxi. There was a commotion and he noticed that the accused had been injured on his lip.
- [18] He confirmed that the accused’s vehicle was the first in line and the Sacco operators had specifically targeted and blocked his vehicle. However, DW2 told the

court that he did not notice any damage on the accused's vehicle. The accused was trying to protect his vehicle from being damaged. He is the only one that was injured.

### **Appellant submissions**

- [19] The appellant submits that the prosecution evidence is marred by so many contradictions. PW1 did not see who it is that stabbed him as he was stabbed from the back. PW 1 does not also testify of the Appellant punching him and the lower court could not find guilt on the Appellant yet the Respondent himself confessed that he did not see who it is that stabbed him and did not talk about being punched in his evidence?
- [20] He submitted further that the complainant was stabbed at the left which starkly contrasts the alleged findings in the P 3 form produced in court as Exhibit 1 by PW 5. The Clinical officer which indicates in its page 2 thereof as stab wound, 5 cm long, deep cut, oozing blood at the back next to the spinal cord at the mid-back. He said that the evidence by PW 2 also points to the victim (Respondent) having ran and fell at the stage near the office. As such, according to PW 2, the harm on the Respondent at this point was occasioned by a fall and not a stab.
- [21] PW 3 equally states that it is they who told the complainant that he had been stabbed and that the complainant shook his shirt and the knife fell down. See page 10 paragraph 3 which states thus: "We took Githinji and told him that he had been stabbed. He shook his shirt and the knife fell off.' The appellant submits that this is not only illogical but also unreasonable and a proof that the charges against the Appellant (accused) were but trumped up charges. It is illogical to have been stabbed deeply on the back without realizing it to the extent that he has to be told that he has been stabbed.
- [22] With regard to PW5, the clinical officer, it is evident that his evidence was purely based on what he was told and the observatory he allegedly made on the complainant at the alleged time of treatment.
- [23] PW 5 therefore could not have seen who it is that actually inflicted the harm on the complainant. PW 5 did not also produce any evidence of his qualifications to the court hence he cannot be termed as an expert witness properly testifying before court hence his testimony should be ignored in its entirety.
- [24] PW 7, the Investigating Officer did not witness the incident hence his evidence is but hearsay evidence is inadmissible in Court.

[25] It was submitted that the spirit of the Appellant's Defence clearly shows that he denied assaulting the Respondent hence the reason there were so many material contradictions by the Prosecution's witnesses as to what really happened, where it happened and how it happened. The Appellant relies on the case of **Paul v Director of Public Prosecution 2023 KEHC 23612 KLR** where the High Court held as follows:

*“Where there is doubt of an kind in a criminal matter and evidence which would likely advance the case of the prosecution is not adduced, the effect of such an occurrence would go to the benefit of an accused person, in this case, the appellant.”*

#### **Respondent submissions**

[26] There are no submissions on record.

#### **Issues**

[27] Whether the complainant, PW1, was assaulted.

[28] Whether he was assaulted by the appellant.

#### **Analysis**

[29] This being a first appeal, this Court is obligated to re-evaluate the evidence on record, analyze it afresh, and reach its own independent conclusions, while bearing in mind that it did not have the advantage of seeing and hearing the witnesses.

[30] This duty was well articulated in **Okeno v Republic [1972] EA 32**, where the **Court of Appeal held that a first appellate court must reconsider the evidence, evaluate it itself, and draw its own conclusions, though it should give due allowance to the fact that the trial court had the advantage of seeing and hearing the witnesses.**

#### ***Whether the complainant was assaulted***

[31] The medical evidence of PW5, the clinical officer, confirmed that the complainant had a deep stab wound near the spinal cord. The injuries were classified as harm. This evidence was supported by the testimony of PW1 and other prosecution witnesses who saw the complainant bleeding. In the Court's view, there is no doubt

that the complainant sustained actual bodily harm within the meaning of section 251 of the Penal Code.

***Whether the appellant was the assailant***

[32] The complainant, PW1, testified that after being stabbed from the back, he turned and saw the appellant holding a knife. He knew the appellant beforehand. This was, therefore, a case of recognition rather than identification of a stranger. In **Anjononi & Others v Republic [1980] KLR 59**, the Court of Appeal held that **recognition of an assailant is more reliable than identification of a stranger because it is based on prior knowledge.**

[33] PW1's evidence was corroborated by PW3, PW4 and PW6, all of whom placed the appellant at the scene and described his participation in the assault. PW4 in particular testified that he saw the appellant take out a knife and stab PW1 on the back.

***Evaluation of the defence***

[34] The appellant denied the offence and suggested that another person may have stabbed PW1. However, he did not name the alleged person or provide any concrete evidence to support that claim.

[35] DW2 merely testified that there was chaos and that he did not see the appellant stab PW1. His testimony did not displace the consistent and direct evidence of PW1, PW3, PW4 and PW6.

[36] In **Kiarie v Republic [1984] KLR 739**, the Court of Appeal held that **while an accused person's defence must be considered, the court is entitled to reject it if it is not plausible when weighed against the prosecution evidence.**

[37] Having weighed the defence against the prosecution case, this Court finds that the defence did not raise any reasonable doubt.

[38] The prosecution bore the burden of proving the case beyond reasonable doubt. The evidence of recognition by PW1, corroborated by multiple eyewitnesses and supported by medical evidence, met this threshold.

**Alleged Contradictions**

[39] The appellant argued that there were contradictions as to whether PW1 was stabbed on the back or left side and whether he realized immediately that he had been stabbed. It is settled law that not every inconsistency is fatal to the prosecution case.

[40] In **Joseph Maina Mwangi v Republic [2000] eKLR**, the Court of Appeal held that discrepancies which do not affect the substance of the prosecution case are not sufficient to warrant an acquittal.

[41] In the present case, the medical evidence confirmed a stab wound at the back. All the eyewitnesses agreed that PW1 was stabbed during the confrontation. The variations in description are minor and do not create reasonable doubt as to the identity of the assailant. The minor variations in the witnesses' descriptions of the exact location of the wound are not fatal. In this case, all witnesses consistently testified that the appellant stabbed PW1 during the protest. The core of the prosecution case remained intact.

#### **Sentence**

[42] The appellant was sentenced to eighteen (18) months' imprisonment. Section 251 of the Penal Code provides for a maximum sentence of five years' imprisonment. The sentence imposed was, therefore, lawful and within the statutory limits. There is nothing on record to suggest that the trial court acted on wrong principles or that the sentence was manifestly excessive.

#### **ORDERS**

[43] Accordingly, for the reasons set out above, the court finds that the appeal is without merit and it is dismissed. The accused who has been out on bail/bond pending appeal shall be detained in prison to complete his sentence.

[44] The sentence of imprisonment for eighteen (18) months passed by the trial court shall take into account the period of the Appellant's pre-trial detention in accordance with section 333 of the Criminal Procedure Code and any time served before the release on bail pending hearing and determination of the appeal.

[45] The Surety for Bail pending appeal is discharged and the security to be returned to depositor.

*Order accordingly.*

**DATED AND DELIVERED THIS 12<sup>TH</sup> DAY OF MARCH 2026.**

**EDWARD M. MURIITHI**  
**JUDGE**

**APPEARANCES:**

Mr. Otuke for the Appellant.

Mr. Mwangi for the DPP.