



**Republic v Fedha (Criminal Appeal E050 of 2024)  
[2026] KEHC 4560 (KLR) (9 April 2026) (Judgment)**

Neutral citation: [2026] KEHC 4560 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KITALE  
CRIMINAL APPEAL E050 OF 2024**

**PJO OTIENO, J**

**APRIL 9, 2026**

**BETWEEN**

**REPUBLIC ..... APPELLANT**

**AND**

**PETER FEDHA ..... RESPONDENT**

*(Being an appeal against the judgment of acquittal delivered by Hon. S.N.Makila  
(PM) in Kitale CMC Criminal Case No. E067 of 2023 on 25th July 2024)*

**JUDGMENT**

1. The Respondent was arraigned before the Principal Magistrate’s Court at Kitale in Criminal Case No. E067 of 2023, charged with the offence of assault causing actual bodily harm contrary to section 251 of the Penal Code. The particulars of the offence were that on 4<sup>th</sup> January 2023, at Mbao Farm Village in Kiminini Sub-County, he unlawfully assaulted one Ruth Simiyu, thereby occasioning her actual bodily harm.
2. The Respondent pleaded not guilty, and the matter proceeded to full trial. The prosecution called four (4) witnesses, whose evidence may be summarized as follows:
3. PW1, Ruth Simiyu, testified that she was employed as a house manager at the home of one Dorcas Fedha, who is the Respondent’s mother. She stated that on 4<sup>th</sup> January 2023 at about 11:00 a.m., she was supervising workers who were shelling maize when the Respondent stormed into the compound, pushed her out of the store, picked a stick, and struck her on the head, causing her injury. She testified that one Peter Mulati was present during the incident and that Dorcas Fedha intervened. She thereafter reported the matter to the police and sought medical attention. PW1 further stated that she had known the Respondent since 2013 and that the incident occurred during the daytime, enabling her to clearly identify him.



4. On cross-examination, PW1 stated that she had no documentary proof of her employment by Dorcas Fedha. She maintained that the maize being shelled on the material day belonged to Dorcas Fedha, although the Respondent also had maize stored separately in the same store. She stated that the shelling was being done using a sheller belonging to one Philip. She further testified that the store was fitted with CCTV cameras, although she did not produce any footage in court. Her evidence regarding treatment records was inconsistent; she initially stated that she had treatment notes, later indicated that they were at home, and subsequently stated that she had given the treatment book to the police. She also acknowledged having previously reported the Respondent to the police in another matter in which she did not testify. She denied knowledge of any family succession dispute relating to the estate of one Nathan Fedha.
5. On re-examination, PW1 denied that she had been coerced by one Janet to testify and stated that she was aware of an inheritance dispute between the said Janet and the Respondent.
6. PW2, Rose Nanjala, testified that on the material day she was at the home of Dorcas Fedha, engaged in shelling maize. She stated that the Respondent entered the store and struck PW1 on the head with a stick as PW1 was counting maize bags. PW1 then retreated into the house, and the Respondent warned her not to return to the compound. PW2 stated that she knew the Respondent well, having seen him frequently at the homestead.
7. On cross-examination, PW2 denied that the Respondent was supervising the shelling of maize and confirmed that the sheller used belonged to one Philip. She conceded that although she had not recorded it in her police statement, she had moved outside the store and witnessed PW1 being assaulted.
8. On re-examination, she clarified that she had initially been inside the store, heard screams, and upon going outside, saw the Respondent assaulting PW1.
9. PW3, a clinical officer at Matunda Sub-County Hospital, Kiminini, testified that PW1 attended the facility on 4<sup>th</sup> January 2023. Upon examination, PW1 was in fair general condition and complained of tenderness to the head, with no injuries noted on other parts of the body. He stated that PW1 had already received treatment by the time he examined her.
10. On cross-examination, PW3 confirmed that he did not personally treat PW1 and that he relied on treatment notes to complete the P3 form.
11. On re-examination, he clarified that although he did not prepare the treatment notes, he assessed PW1 and obtained information from both her account and the treatment records.
12. PW4, the investigating officer, testified that on 4<sup>th</sup> January 2023, PW1 reported to the police that she had been assaulted by the Respondent. He visited the scene and established that PW1 was a farm manager at a farm belonging to the Respondent and his mother. He testified that PW1 had been supervising the shelling of maize when the Respondent confronted her on allegations that she had accessed his maize stored in the facility, whereupon he assaulted her using a stick, causing head injuries. He further stated that there was CCTV coverage at the scene and that he had obtained the footage, which was stored on a disc.
13. On cross-examination, PW4 conceded that he did not produce a certificate of production in respect of the CCTV footage and that no treatment notes were contained in the police file.
14. Upon the close of the prosecution's case, the trial court found that a prima facie case had been established against the Respondent and accordingly placed him on his defence.



15. The Respondent testified as the sole defence witness. He denied the allegation that he assaulted the complainant and maintained that the store in question belonged to him and was situated on his parcel of land. He stated that there had been incidents of theft of maize from the said store. He further asserted that the complainant was a habitual complainant against him and that her actions were influenced by his sister, Janet, with whom he has an ongoing succession dispute. In support of this assertion, he referred to other cases allegedly instigated by PW1, namely Criminal Case No. E553 of 2022, Criminal Case No. E540 of 2022 involving his nephew on a charge of assault, and Criminal Case No. E020 of 2023 in which PW1 is a witness.
16. The foregoing evidence marked the close of the defence case. Subsequently, judgment was delivered on 25<sup>th</sup> July 2024 wherein the trial court found that the prosecution had failed to prove its case beyond reasonable doubt. The Respondent was accordingly acquitted of the charge of assault causing actual bodily harm contrary to section 251 of the Penal Code, pursuant to section 215 of the Criminal Procedure Code.
17. Aggrieved by the said judgment, the Appellant lodged the present appeal vide a Memorandum of Appeal dated 5<sup>th</sup> August 2024, seeking to have the acquittal set aside and substituted with a conviction for the offence of assault causing actual bodily harm contrary to section 251 of the Penal Code. The appeal is premised on the following grounds:
  - a. The learned magistrate erred in law and fact when she held that no reason was given why Dorcas Fedha did not record her statement.
  - b. The learned magistrate erred in law when she held that no reason was given as to why Paul Mulati was not called to testify in the case.
  - c. The learned magistrate erred in law and in fact when she held that the accused person created reasonable doubt when the accused testified and listed the number of pending cases between the accused and the complainant.
  - d. The learned magistrate erred in law and in fact when she totally remained silent about the documentary and electronic evidence produced in court.
  - e. The learned magistrate erred in law by relying and believing in unsworn evidence given by the accused yet the same was not corroborated by an independent witness.
  - f. The learned magistrate erred in law and in fact when she held there were too many unanswered questions and inconsistencies in the prosecution's case.
  - g. The learned magistrate erred in law and in fact when she acquitted the accused despite having heard overwhelming evidence against him.
  - h. The learned magistrate erred in law and in fact when she disregarded the submissions made by prosecution and the authorities cited.
18. From the record, only the Appellant filed submissions in support of the appeal, which may be summarized as follows:

### **Appellant's Submissions**

19. In its submissions, the Appellant identifies three issues for determination, namely: a) whether the offence was proved beyond reasonable doubt; b) whether an adverse inference ought to be drawn from



- the failure to call Dorcas Fedha and Paul Mulati, who were said to be eye witnesses; and c) whether the Respondent properly produced any exhibits, if at all.
20. On the question of proof of the offence, the Appellant relies on *Ndaa v Republic* [1984] KLR, wherein the Court of Appeal set out the essential ingredients of the offence of assault causing actual bodily harm as being the unlawful assault of the complainant and the consequent occasioning of actual bodily harm.
  21. As regards the meaning of “actual bodily harm,” the Appellant cites *Guya v Republic* (Criminal Appeal No. 76 of 2018) [2023] KEHC 2312 (KLR), where the Court stated:

“The expression ‘actual bodily harm’ consists of three ordinary English words which require no elaborate definition. ‘Harm’ is synonymous with injury; ‘actual’ denotes that the injury, though not necessarily permanent, must not be so trivial as to be wholly insignificant; and ‘bodily’ refers to the physical human body as opposed to other attributes such as reputation or emotion.”
  22. The Appellant submits that the incident occurred in broad daylight, thereby enhancing the possibility of positive identification. It contends that PW1 gave a detailed account of how the Respondent pushed her out of the store and struck her on the head with a stick, causing injury. This evidence, it is argued, was corroborated by PW2, an eye witness, as well as by the medical evidence of PW3. Further, the Appellant submits that PW2’s testimony that she witnessed the Respondent assault PW1 was not materially shaken on cross-examination.
  23. On medical corroboration, the Appellant submits that PW3, the clinical officer, examined the complainant and completed the P3 form, thereby confirming the existence of injuries. It argues that the absence of specificity as to the exact part of the head injured does not detract from the fact that an injury was sustained.
  24. The Appellant faults the trial court for what it terms as an unduly stringent standard of proof, particularly in requiring the complainant to specify the precise part of the head struck and the number of blows inflicted. It submits that such expectations are unrealistic, especially in the context of a sudden assault, where a victim cannot reasonably be expected to recall minute details with precision.
  25. On the issue of failure to call Dorcas Fedha and Paul Mulati as witnesses, the Appellant relies on *Columbus Ndindi Okoth v Republic* [2008] eKLR for the proposition that an adverse inference will only be drawn where the evidence on record is insufficient to establish a material fact. It submits that where the available evidence is adequate, the failure to call additional witnesses is not fatal to the prosecution’s case.
  26. The Appellant contends that the evidence of PW1 was sufficiently corroborated by PW2 and the medical evidence of PW3, and that the testimony of the said Dorcas Fedha and Paul Mulati would not have added any significant probative value. It further submits that an attempt was made to produce CCTV footage of the incident, but that such effort was frustrated by the trial court.
  27. On whether the Respondent properly produced any exhibits, the Appellant submits that the Respondent merely invited the trial court to summon the court administrator to avail files relating to other disputes between the parties, or alternatively to peruse such files suo motu. It is contended that this approach was procedurally improper, as it is incumbent upon parties to formally produce evidence in accordance with the law. The Appellant argues that the trial court fell into error by placing reliance on material that had not been properly produced or admitted into evidence.



28. On the basis of the foregoing, the Appellant urges this Court to allow the appeal, set aside the acquittal, and substitute it with a conviction.

### **Issues, Analysis, and Determination**

29. Having considered the record of appeal, the grounds thereof, and the submissions by the Appellant, the singular issue that arises for determination is whether the appeal is merited; that is, whether the learned trial magistrate erred in law and in fact in acquitting the Respondent of the offence of assault causing actual bodily harm contrary to section 251 of the Penal Code.

### **Analysis**

30. This being a first appeal, this Court is under a duty to re-evaluate and re-analyze the evidence on record and to arrive at its own independent conclusions, while bearing in mind that it did not have the advantage of seeing or hearing the witnesses testify. This duty was succinctly articulated in *Okeno v Republic* [1972] EA 32, where the Court of Appeal held that a first appellate court must subject the entire evidence to a fresh and exhaustive examination and draw its own conclusions.
31. That said, an appellate court exercises restraint when invited to interfere with an acquittal. It will only do so where it is shown that the trial court misdirected itself on the law, misapprehended the evidence, or reached a conclusion that is plainly untenable. Moreover, where the evidence is capable of supporting two reasonable interpretations, the law requires that the interpretation favorable to the accused be adopted, as was emphasized in *Kipkering arap Koske & Another v Republic* [1949] 16 EACA 135.
32. The offence of assault causing actual bodily harm under section 251 of the Penal Code is established upon proof that the accused unlawfully assaulted the complainant and that such assault occasioned actual bodily harm. In *Ndaa v Republic* [1984] KLR, the Court of Appeal affirmed that both elements must be proved to the requisite standard.
33. The nature of “actual bodily harm” has long been settled. In *Rex v Donovan* [1934] 2 KB 498, the court explained that it includes any hurt or injury calculated to interfere with the health or comfort of the victim, provided that it is more than merely trivial or transient.
34. Turning to the evidence on record, PW1 testified that the Respondent struck her on the head with a stick at about 11:00 a.m., thereby causing injury. PW2, who testified as an eye witness, sought to corroborate this account. She stated that she was at the store at around 11:00 a.m. when the Respondent arrived, pushed PW1, and assaulted her. However, on cross-examination, she indicated that she remained inside the store until about 1:30 p.m., thereby creating uncertainty as to whether she was in a position to witness the incident at the time it allegedly occurred. Further, while she initially suggested that the events occurred within the store, she later testified that she went outside and saw the complainant being assaulted. She also introduced the detail that the Respondent struck PW1 three times at the back of the head, a detail not mentioned by PW1 herself. These inconsistencies, both as to timeline and location, cast doubt on the reliability of PW2’s account and consequently weaken the prosecution’s case.
35. The complainant also testified that Dorcas Fedha intervened during the incident and that one Paul Mulati was present. These witnesses were therefore central to the events in question. While the prosecution is not obliged to call a multiplicity of witnesses, the principle stated in *Bukenya & Others v Uganda* [1972] EA 549 is instructive: where the prosecution fails to call material witnesses without



explanation, the court is entitled to draw an adverse inference that their evidence would have been averse to the prosecution.

36. In the present case, the absence of Dorcas Fedha and Paul Mulati, both of whom were said to have been present at the scene, left a material gap in the prosecution's case. No explanation was offered for their omission, yet their evidence would have been critical in clarifying the circumstances of the alleged assault.
37. Further doubt arises from the inconsistencies in PW1's testimony regarding the existence and production of treatment notes and CCTV footage. While PW1 gave varying accounts as to the whereabouts of her treatment records, PW4 conceded that no such treatment notes were contained in the police file. Additionally, although CCTV footage was said to exist, it was not produced in compliance with section 106B of the *Evidence Act*, which governs the admissibility of electronic evidence.
38. The failure to properly produce this documentary and electronic evidence deprived the court of potentially objective and corroborative material, thereby weakening the prosecution's case.
39. As regards the medical evidence, PW3 confirmed that PW1 had tenderness of the head. However, the treatment notes upon which the P3 form was based were not tendered in evidence. This omission diminished the probative value of the medical evidence and left gaps as to the nature and extent of the injuries sustained.
40. In the final analysis, the cumulative effect of the inconsistencies in the prosecution's evidence, the failure to call key witnesses, and the gaps in both documentary and medical evidence was to create reasonable doubt whether the offence was proved to the required standard.
41. In those circumstances, the trial court properly resolved that doubt in favor of the Respondent, in keeping with the fundamental principle of criminal law that any doubt must be resolved in favor of the accused.
42. Accordingly, this Court finds no basis upon which to interfere with the acquittal. The appeal is devoid of merit and is hereby dismissed. The acquittal of the Respondent under section 215 of the Criminal Procedure Code is upheld.

**DATED, SIGNED AND DELIVERED AT LODWAR THIS 9<sup>TH</sup> DAY OF APRIL 2026**

**PATRICK J O OTIENO**

**JUDGE**

