

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KIBERA
CRIMINAL APPEAL NO. E009 OF 2026

JANTRIX ANDEGA MIHESO
.....APPELLANT

VERSUS

REPUBLIC.....
RESPONDENT

(Being an appeal against the original conviction and sentence delivered on 15th Day of January 2026 by Hon. Z. Abdul (PM) at Kibera Chief Magistrate's Court, Criminal Case No. E929 of 2024 Republic vs Jantrix Andega Miheso)

JUDGEMENT

1. The appellant was charged and after a full trial convicted for the offence of grievous harm contrary to section 234 of the Penal Code. The particulars of the offence as per the charge sheet are that on the 29th Day of March 2024 at Kawangware Kabiru area in Dagoretti Sub-County within Nairobi County unlawfully did grievous harm to Carolyne Malimo Shinaka. She was sentenced to serve three (3) years' imprisonment.
2. Being aggrieved, he filed an appeal challenging his conviction and sentence. In his petition of appeal, he challenged the totality of the prosecution's evidence against which he was convicted. He complained that the prosecution did not meet the standard of proof as required. He urged the court to quash his conviction and set aside the sentence imposed.
3. The appeal was canvassed by way of written submissions by both parties, which have been duly considered without the need to rehash them. This is the first appellate court and in **Okeno v. R [1972] EA 32**, the Court of Appeal for East Africa laid down what the duty of the first appellate court is. It is to analyse and re-evaluate the evidence which was before the trial court and

come to its own conclusions on that evidence without overlooking the conclusions of the trial court but bearing in mind that it never saw the witnesses testify.

4. The prosecution called four witnesses in support of its case. PW1, Carolyne Malimo Shinaka, testified that on 29th March 2024 at about 4.00 p.m., she was outside basking before proceeding to a neighbour's house belonging to Sheryl. While there, she overheard abusive remarks directed at her, namely, "*mwanamke mjinga huwezi kaa kwako kazi ni kuzunguka kwa nyumba za watu.*" She and another neighbour went outside to check what was happening. Upon stepping out, the appellant allegedly struck her on the jaw with a metal bar. She testified that the appellant hit her a second time, causing her to spit out two teeth, blood and fracture a third tooth.
5. PW1 stated that she attempted to take the metal bar from the appellant, but the appellant escaped into her house. Sheryl later took her to Mutethania Nursing Home for first aid treatment. She thereafter reported the incident at Muthangari Police Station. During cross-examination, she maintained that the appellant was her neighbour and confirmed that Sheryl was present during the incident. She stated that she lost consciousness after spitting out blood and two teeth.
6. PW2, Sheryl Mutimba, testified that on the material day she was with both PW1 and the appellant. She had left her children playing inside the house. She later called PW1 to hear what the children were saying, whereupon PW1 allegedly came with a cane and beat the children. The appellant questioned why PW1 was beating them, leading to an altercation. PW1 allegedly attempted to beat the appellant and pulled her hair. The appellant defended herself by pushing PW1.

7. PW2 stated that the two fought until PW1's husband intervened and separated them. Despite this, PW1 allegedly continued insulting the appellant and followed her towards her house. PW2 further stated that PW1 later started bleeding and pulled the appellant's house door. She claimed that PW1 forced her to record a statement implicating the appellant and that she was confused at the time. During cross-examination, PW2 maintained that PW1 attacked the appellant first and denied that PW1 had been struck with a blunt object, asserting that the appellant acted in self-defence.
8. PW3, PC Orina Meraba, the investigating officer attached to Muthangari Police Station, testified that on 30th March 2024 PW1 reported an assault by her neighbour. He observed fresh injuries in her mouth, and PW1 alleged that her teeth had been removed during the assault. PW1 handed over two human teeth, a blood-stained blouse and the completed P3 Form. He later coordinated with Nyumba Kumi elders who arrested the appellant before she was re-arrested and detained by police. PW3 testified that upon interrogation, the appellant admitted involvement in the altercation though she claimed not to know the extent of the injuries sustained.
9. During cross-examination, PW3 confirmed that PW1 had missing teeth consistent with assault by a blunt object. He further testified that the appellant allegedly fled with the blunt object and locked herself inside her house.
10. PW4, Dr. Kamau Mariga, testified that he examined PW1 and completed the P3 Form. He observed that teeth numbered 42 and 43 were missing while tooth 45 was fractured. He assessed the injuries as four days old and caused by blunt trauma. The degree of injury was classified as grievous harm. During cross-

examination, he confirmed that his findings were based on treatment notes, the patient's history and his own medical examination. He further confirmed during re-examination that the injuries were consistent with the history given by the patient.

11. In her defence, the appellant denied assaulting PW1 with a metal bar. She stated that PW1 had been beating children and that she merely intervened. According to her, PW1 attempted to attack her, pulled her hair and later injured herself on the door as the appellant locked herself inside the house. She stated that she reported the matter at Hope Centre Police Station and was referred to the chief.

12. DW2, Patrick Ogola, testified that he found PW1 beating children and that PW1 attacked the appellant first while armed with a cane. He stated that the appellant had no weapon and that the two were separated. According to him, PW1 later continued insulting the appellant and had a history of insulting her.

13. The trial court considered the evidence in totality and convicted the appellant.

14. Section 234 of the Penal Code provides for the offence of Grievous Harm as follows:

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

15. Upon re-evaluation of the evidence on record, it is not disputed that PW1 sustained serious dental injuries amounting to grievous harm within the meaning of Section 4 of the Penal Code. The medical evidence of PW4, Dr. Kamau Mariga, confirmed that teeth numbered 42 and 43 were missing while tooth 45 was

fractured. He assessed the injuries as blunt force trauma and classified the degree of injury as grievous harm. His findings were consistent with the treatment notes and the history given by PW1.

16. The central issue for determination is whether the prosecution proved beyond reasonable doubt that the appellant unlawfully inflicted those injuries. PW1 testified that the appellant struck her twice with a metal bar. However, PW2, Sheryl Mutimba, who was present during the altercation, gave a materially different account. She stated that PW1 had initially attacked the appellant while armed with a cane, pulled the appellant's hair and that the appellant merely defended herself by pushing PW1. PW2 expressly denied seeing the appellant strike PW1 with any blunt object.
17. The prosecution did not recover or produce the alleged metal bar before the trial court. No independent witness testified to having seen the appellant strike PW1 with the alleged weapon. Equally, no forensic or photographic evidence was tendered to connect the appellant to the alleged assault weapon or demonstrate the manner in which the injuries were inflicted.
18. The appellant's defence was that PW1 sustained injury while forcefully pulling the appellant's door during the confrontation. That explanation was not displaced by the prosecution. Significantly, PW2's testimony substantially supported the defence account that the incident arose from a physical struggle initiated by PW1.
19. While medical evidence conclusively established the existence of grievous harm, medical evidence alone could not establish the identity of the assailant or the precise manner in which the injuries were inflicted. The contradiction between PW1 and PW2

on the crucial issue of assault with a blunt object went to the root of the prosecution case and was not a minor inconsistency.

20. In **Richard Munene v Republic [2018] eKLR**, the Court of Appeal held:

“Contradictions, discrepancies, and inconsistencies in evidence of a witness go to discredit that witness as being unreliable... they must be resolved in favour of the accused.”

21. The test as to whether the contradictions are minor or substantial was laid out in **Sigei v Republic [2023] KECA 154 (KLR)**, requiring that for contradictions to be fatal, they must concern "substantial matters" and the "**real substance of the case.**"

22. In the present case, the contradiction on whether the appellant assaulted PW1 with a metal bar was central to the charge. The prosecution failed to reconcile the conflicting accounts given by PW1 and PW2 or to produce the alleged weapon. These omissions created reasonable doubt as to whether the injuries were unlawfully inflicted by the appellant in the manner alleged.

23. Upon re-evaluation of the entire evidence, I find that although grievous harm was proved, the prosecution failed to establish beyond reasonable doubt that the appellant unlawfully caused those injuries. The evidentiary gaps and material inconsistencies must be resolved in favour of the appellant.

24. Consequently, the conviction was unsafe. The conviction of the trial court is quashed and the sentence set aside. The appellant is set at liberty unless otherwise lawfully held.

Orders accordingly.

Judgement dated and delivered virtually this 14th day of May 2026

**D. KAVEDZA
JUDGE**

In the presence:

Mr. Ongeru for the Appellant

Mr. Kamau for the Respondent

Karimi Court Assistant.

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