



REPUBLIC OF KENYA



KENYA LAW
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**Wairimu v Republic (Criminal Appeal 18 of 2024)
[2025] KEHC 500 (KLR) (28 January 2025) (Judgment)**

Neutral citation: [2025] KEHC 500 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL 18 OF 2024
DR KAVEDZA, J
JANUARY 28, 2025**

BETWEEN

CYRUS KAMANDE WAIRIMU APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal against the original conviction and sentence
delivered by Hon. S. Temu (S.P.M) at Kibera Chief Magistrate's Court
Criminal case no. E980 of 2023 Republic vs Cyrus Kamande Wairimu)*

JUDGMENT

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 17th day of June 2023 at Dagorretti Market of Muuini Area Dagoretti Sub-county within Nairobi County unlawfully did grievous harm to Joseph Gicheru Kagai. He was sentenced to serve four (4) 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.
4. 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.



5. The prosecution called four (4) witnesses in support of their case. PW1, Wairimu Cyrus Kamande, testified that he worked at Ndonyo Market as chairman of Big Max Transport Limited Sacco and previously worked with the appellant at the same stage. On 17/06/2022 at approximately 5:45 pm, PW1 encountered the appellant arranging matatus on the road contrary to regulations. When PW1 intervened, the appellant refused to comply, stating he was "unmanageable" and untouchable, even by the OCS.
6. The appellant then abused and physically attacked PW1, punching him in the mouth, biting his left hand, and pushing him into a ditch. PW1, whose leg had a pre-existing injury fixed with an iron rod, was further injured during the altercation. Members of the public, including PW2 and PW4, rescued PW1 and took him to Nile Nursing Home for treatment. PW1 reported the incident to the police, where he was issued a P3 form. He stated that his lower front tooth became loose due to the assault and identified the appellant, who had known him for over a year, as the attacker.
7. PW2 Peter Ngugi Kehera and PW4 George Kamau Mbugua corroborated PW1's testimony, confirming that they witnessed the appellant cause a commotion, attack PW1, bite his hand, and push him into a ditch, resulting in injuries. They escorted PW1 to the hospital.
8. PW3 Dr. George Kungu Mwangi testified that he examined PW1, who had been referred from the police station. PW1 presented with swollen and bruised lips, a loose lower front tooth, fresh bite marks on his right hand, and tenderness in his right knee. Dr. Kungu categorized the injuries as grievous harm due to the likely removal of the affected tooth. He produced the P3 form and treatment notes as evidence.
9. PC Langat, the investigating officer confirmed receiving the report at Mutuini Police Station, issuing the P3 form to PW1, and charging the appellant based on recorded statements and medical evidence.
10. In his defence, he claimed that on the date of the incident, there was a confrontation during which the complainant injured his leg. He reported the matter to the police, obtained a P3 form, and underwent an X-ray. He also alleged he was bitten on the shoulder, but this claim was not pursued by the police.
11. The appellant further stated that he received treatment and had supporting documents. He dismissed PW2 and PW4's testimony as biased, asserting they were the complainant's subordinates and could not contradict him. He noted that, despite many witnesses being present at the stage, only the complainant's workers were called to testify.
12. During cross-examination, the appellant admitted he fought with the complainant but did not inquire about the injuries the complainant allegedly sustained.
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. Section 4 of the *Penal Code* defines grievous harm as follows: -

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



16. Evidence of grievous harm in this case was primarily established through several key elements. First, the complainant sustained multiple injuries during the incident, including a loose lower front tooth, swollen and bruised lips, fresh bite marks on his right hand, and tenderness in his right knee. Additionally, the complainant's pre-existing leg injury, which had been stabilized with an iron rod, was aggravated when the appellant pushed him into a ditch. These injuries were confirmed by medical evidence presented by Dr. George Kungu, who categorized them as grievous harm, and corroborated by eyewitness accounts of PW2 and PW4.
 17. Together, these elements painted a picture of the complaint's injuries, firmly establishing the presence of grievous harm.
 18. Section 231(b) of the *Penal Code* on acts intended to cause grievous harm refers to the use of a dangerous or offensive weapon. From the record, the injuries sustained by the complainant, including a loose tooth, bite marks, and bruises, indicate that the appellant used physical force, including his fists and teeth, to inflict harm.
 19. On mens rea, there is no question that it is unlawful to strike, cut, or otherwise wound another person. The offence of grievous harm is, therefore, complete when the appellant intentionally assaults the complainant and causes grievous harm. The mens rea may only be taken away in the circumstances described under Section 9 of the *Penal Code*. Mens rea can only be taken away if it can be shown that the appellant was by reason of insanity (Section 12 of the *Penal Code*) or intoxication induced by the complainant (Section 13 of the *Penal Code*) not aware of what he was doing, or that it was unlawful. None of these factors were argued by the appellant.
 20. In the end, I find that all the ingredients for the offence of grievous harm were proved against the appellant beyond reasonable doubt. The conviction is sustained.
 21. On sentence, the appellant was sentenced to serve four (4) years imprisonment. Section 234 of the *Penal Code* provides that any person who unlawfully does grievous harm to another is guilty of a felony and is liable to imprisonment for life.
 22. During sentencing, the trial court considered the appellant's mitigation and that he was a first offender. The sentence imposed was legal and appropriate under the circumstances.
 23. In the end, I find that the appeal is found to be lacking in merit and is dismissed.
- Orders accordingly.

JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 28TH DAY OF JANUARY 2025

D. KAVEDZA

JUDGE

In the presence of:

Appellant Present

Mutuma for the Respondent

Achode Court Assistant

