



REPUBLIC OF KENYA



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**Maree v Republic (Criminal Appeal E010 of 2024)  
[2025] KEHC 7356 (KLR) (28 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 7356 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
CRIMINAL APPEAL E010 OF 2024  
JK NG'ARNG'AR, J  
MAY 28, 2025**

**BETWEEN**

**ANTONY MURIITHI MAREE ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal from the Judgment of Hon. G. W. Kirugumi (PM) at Kerugoya  
Law Court Criminal Case No. E547 of 2022 delivered on 22nd February 2024)*

**JUDGMENT**

**A. Introduction**

1. The Appellant was charged with assault causing actual bodily harm contrary to contrary to Section 251 of the *Penal Code*. The particulars of the offence read that it was on the 30<sup>th</sup> day of March 2022 at Kiamwenja Sub Location in Kirinyaga Central Sub County within Kirinyaga County, willfully and unlawfully assaulted one John Maree Ngethu by spraying his face with an acidic fluid thereby causing hi actual bodily harm. The trial magistrate convicted and sentenced him to 3 years' imprisonment. Being aggrieved, the Appellant filed this appeal challenging his conviction and raised the following grounds of appeal:
  - a. That the honourable learned magistrate erred in law and fact in convicting the Appellant against the weighty of the evidence.
  - b. That the honourable learned magistrate erred in law and fact in arriving at a conclusion that the Appellant assaulted the complainant.
  - c. That the honourable learned magistrate erred in law and fact in sentencing the Appellant to a period of three (3) years without the option of a fine.



- d. That the honourable learned magistrate erred in law and fact in failing to consider the probation officer's report recommending for a non-custodial sentence.
  - e. That the honourable learned magistrate erred in law and fact in failing to take into consideration the mitigating facts by the Appellant.
  - f. That the honourable learned magistrate erred in law and fact in handing a harsh sentence to the Appellant in the circumstance.
2. As this is a first appeal, I am required to conduct a fresh evaluation of all the evidence and come to an independent conclusion as to whether or not to uphold the conviction and sentence. This task must have regard to the fact that I never saw or heard the witnesses testify (See *Okeno vs Republic* [1973] EA 32).

### **B. Prosecution case**

3. The prosecution called a total of 8 witnesses with the complainant testifying as (PW1) and who confirmed he was the Appellant's father. That it was on 30<sup>th</sup> March 2022 when he had called his children and paid the surveyor for he wanted to subdivide the land for them and he also had invited the area assistant chief and elders. They started the subdivision at 10am and completed at 5pm and after escorting the surveyor, he returned home at around 7pm. It was then he met with his children Anthony Muriithi, Mary Wanjiku Gichobi, Anna Murage and Michael Gitwe as they were hiding at the fence and who had said they wanted to kill him. It was then the Appellant who had acid in his hands poured it on his face which caused him to fall down as he raised alarm.
4. It was then his wife Teresiah went there with water that their children escaped and she called another person also known as Michael and they rushed him to hospital and thereafter he went to record his statement at the police station. He added that this was not the first time they had attacked him for there before they had assaulted him but he opted to forgive them. In cross examination, he said his land No. Inoi/Kiaga/2809 was 4 acres and which he was subdividing among his 2 wives: the first one being Teresiah Wambura who had 5 children whom he named therein together with those of his second wife. At that point the state counsel requested for the complainant to be stood down for pretrial purposes and so the next time they came, the defence counsel was absent and the Appellant opted to proceed with the cross examination of his father.
5. He listed the names of the 3 men he had called to his farm together with the assistant chief and the surveyor and so he had called his children to witness the same. It was then he said his second wife was Jacinta Wambui and each of his 2 wives were to get 2 acres. That the Appellant had earlier been called to go witness the same but he refused and started issuing threats and when he returned home he noted all the above listed children as the ones who had laid an ambush while they hid in a bush near his house. It was when he tried to grab Michael Gitwe that the Appellant managed to spray him with the acid and it was then the defence counsel appeared and continued with cross examination as he alleged to have been held up before Baricho Law Court.
6. He went on to testify that all the said children were armed with acid and that was when he tried to hold Michael when Appellant sprayed the acid on him though Michael also managed to also spray acid on him. He added that he was sober at the time and he noted his 2 daughters Mary Wanjiku Gichobi and Anne Wangari were hiding at the banana plants though they managed to run away though all of them had kept threatening him. His wife Teresiah Wambura testified as PW2 and confirmed that the Appellant was her stepson. That on the material evening he returned home but then he started screaming so she rushed to where he was at only to find him on the ground unable to breath. She rushed



to get water which she poured on him and then the complainant managed to wash his face and hands before he stood up.

7. They got into the house where he put more water for him in the basin which he used to clean his face as his skin had already started peeling off. She did not know what had been poured on him that caused his face skin to peel though his attackers had run away and she never asked him who they were. In cross examination she said she was alone at home and after she took the complainant in the house, she called Mwaniki and she had found his attackers had escaped. It was in the morning when she found a red cap at the scene though it was Mwaniki and Michael who took him to hospital.
8. Michael Gitwe Maree (PW3) testified the complainant was his father and on the material evening at around 7.30pm he received a call from his brother Erastus Mwaniki who asked him to rush home for some substance had been poured on their father. Since he was with his friend Humphrey Mugo and who had a vehicle, they rushed home where they found their father was not breathing well so their mother kept wiping his face and that was when he noted his skin was peeling from his face, head, neck, ears and hair. It was at the hospital where they were told it was acid which had been poured on him and he was admitted at Kerugoya Hospital for 3 days. In cross examination he said they were 14 children at their home and during the assault he was not present.
9. They went to the station where they were given an OB number then rushed him to the hospital and by then he was not keen on time. He had also spoken to his mother who said she heard only their father screaming so she rushed there. Erastus Mwaniki Maree (PW4) also confirmed that the Appellant was his stepbrother and that on the material night he left Kiamwenja Shopping Centre at around 7.30pm while in the company of his wife and child on a motorbike. It was then they heard their mother talking loudly so his wife rushed towards her as he also rushed there after her. They found their mother complaining that had their father gone home earlier the incident would not have occurred and that was when he saw his father's head was wet while his jacket was emitting vapour.
10. It was then he removed his suit and tried to clean him with water when he realized all was not well and that was when his skin started peeling. He called his brother (PW3) who rushed home while in the company of Mugo and they rushed their father to hospital. It was then they realized it was a chemical which had been poured on him and he had taken his photograph which he gave to the police. That it was at the hospital where their father said it was his sons who had harmed him. In cross examination he confirmed their father had 2 wives, his mother and another who was already deceased. That on the material day he was at work until 2pm when he went home for their father was subdividing his land.
11. Although he did not know the title number of their father's land, that he had already been subdivided for his portion opposite their father's land but that he never got into the land during its subdivision. He went on to describe the state he found his father in and he had him remove both his jacket and shirt as he wiped him with a piece of cloth and the photographs he took they were already in hospital. That it was when he was wiping him that his skin was peeling and although they were given an outpatient number, the doctor admitted their father after he said chemicals had been splashed on him. After he was discharged, he became seriously ill for he could not eat and walk then they returned him to hospital.
12. Nicholas Munene Njiru (PW5) testified he was the area chief of Kiamwenja Sub Location and on the material day he had spent the whole day at complainant's farm while in the company of the village elder – Humphrey Mugo as the complainant had asked them to go there for he was subdividing his land for his children. However, his children – the Appellant, Kinyua, Wanjiku, Michael and another daughter whose name he could not recall at the time started causing chaos for they were dissatisfied but they asked them to wait until the subdivision was complete. The complainant also told them to



stop complaining for he was only complying with the court order so he tried to call them together to talk to them but they refused and started to threaten the complainant.

13. He asked them to stop threatening him and also told the complainant to go to the police station and report the same but he insisted on reporting the next day. Once they completed the subdivision he escorted them but when he got home at 8pm PW3 called him saying the complainant had already been attacked so he advised them to take the complainant to hospital. In cross examination he confirmed the complainant was not his neighbour and he had only been called by him then to go witness the subdivision for which he only gave him a search and not the court order and complainant never told him the size of the land he was giving each child. The surveyor was there and he subdivided the land into 7 portions and the children were not satisfied and said their father was oppressing them. The first wife's children did not complain as to their portion.
14. Humphrey Mugo Ngigi (PW6) testified he was the aforesaid village elder and he testified that the previous day they were at the assistant chief's office when they were informed the next day they were supposed to go to the complainant's home for he was subdividing his land though the surveyor so he arrived there at 10am. He did not know the sizes being subdivided and who were the beneficiaries so he just walked there as a witness. He did not know how many wives the complainant had but he had subdivided his land for his children but some of them were dissatisfied including Michael for he was standing next to him though the Appellant never complained though said he was not happy.
15. He added that he was not so sure how many of them complained for he was not standing close to all of them and after the subdivision was concluded, the assistant chief had asked them to meet back to their office. It was around 7.30pm when he was in the company of Michael Gitwe when they were asked to go rush the complainant to hospital. They rushed there only to find the complainant's clothes smelling of a substance so they first rushed him to the police station then to the hospital. He couldn't describe him that night but he kept visiting him in hospital where eventually he saw from his face to the chest had the skin peeled off.
16. In cross examination he said he did not know of any court order as all the assistant chief asked him to do was to accompany him there where he found complainant's family members and he never saw any documents. At night when they were asked to rush the complainant to hospital, he never checked the time but it was dark and he did not bother to check the colour of the clothes the complainant was wearing. Corporal Naomi Chelagat (PW7) testified she was at the station on 28<sup>th</sup> May 2022 when the complainant in the company of 4 others went there saying they had reported an assault case in March 2022. She checked the occurrence book and confirmed their report having been booked therein.
17. The complainant recorded that at around 1840 hours on the material day he was on his way to his house and when he got into his compound, he found his children – the Appellant, Michael Gitwe, Anna Wangari and Wanjiku Gichobi at his gate when the Appellant and Michael Gitwe sprayed his face with acid. Due to pain he rushed to his house while screaming and his wife heard him and she tried to give him first aid by washing his face with water. She called her son, the other Michael Gitwe who arrived shortly thereafter and rushed him to hospital where he was admitted and treated. Once discharged, he went to follow up on the matter and the assailants who were at large were eventually arrested after the assistant chief summoned them to his office.
18. She produced the shirt the complainant was wearing, the photograph taken and in cross examination she noted the first hospital discharge of the complainant and that she followed up on the case after his second discharge. That the complainant had 2 wives and many children and it was the complainant who reported of the Appellant having gone into hiding. Gushon Odhiambo Owino (PW8) testified that he was the clinician who produced the 2 discharge summaries of the complainant who had been



admitted with chemical burns on his eyes and face and gastritis and was put on TB medication after his results showed he also had TB. To fill the P3 form, he had relied on the discharge summaries and outpatient card as he reported to having been assaulted by people known to him on 30<sup>th</sup> March 2022 but denied he had been under influence of any drug and the injuries he had were caused by acid.

19. In cross examination he confirmed he physically saw the complainant who had been accompanied by his relatives and the history he had given matched the injuries he had sustained. After his discharge he was readmitted again for the medication was not 100% successful and he had inhaled the chemicals poured on him and once admitted he was managed by many doctors.

### **C. Defence case**

20. The Appellant gave his sworn defence wherein he confirmed the complainant was his father and he denied committing the offence herein. That on the material day his father had called him asking him to go home for he used to reside at Mwea. Their father had subdivided his land into 3 portions with his father's house being in one acre of land. He gave his first wife 2 acres and their mother who had 14 children had died in 1978. When he arrived home he found his siblings were there then their father got there and 10am and told them to listen to what he was going to say. He had arrived there while in the company of the assistant chief and village elder, surveyor and some young men. It was then the assistant chief said they were to subdivide the 2 acres which he had already given them.
21. They were asked by the assistant chief not to interfere with the subdivision which took place and the subdivision marked with posts. Since the line was to pass his stepbrother – Michael's plot reducing it, he went there with a caution and told him to keep quiet as Michael argued with the surveyor. That the posts were removed after the assistant chief was informed that a caution had been registered on the land and since they concluded at 5pm, he left. Their father went to where they were at and told them not to cultivate the land or touch anything until he died. They left and went away in peace and they had lied he assaulted their father yet he had no problems with him. That he was a man he respected and even used to buy him clothes.
22. It was in his cross examination that he admitted he was not satisfied with the subdivision but they left and went to their homes. Lydia Wakana Mwai (DW2) testified the Appellant was her husband and on the material day he had gone to his father's home after the father had summoned him. When he returned home he told her he did not pick mangoes at their home for the assistant chief had prohibited them for they had not been shown where to construct but the land had been subdivided. She denied her husband had carried acid with him but they had land cases in court and a week later his brother called him saying it was alleged he had burnt their father. In December they found people cutting trees at the farm as she denied he was the one who burnt the complainant. In cross examination she said she did not know the complainant was in hospital and that she had seen her husband at home at 7.10pm but she could not tell what he did or did not do.

### **D. Appellant's submissions**

23. He submitted that there were a lot of doubts in the complainant's evidence for it was not possible for acid to have been poured on his face and still see the events as they unfolded as he testified Michael Gitwe was in front while the Appellant was on the side. That the evidence adduced against him did not meet the threshold reaching the conclusion that he was the one who assaulted the complainant. That the evidence relied on by the court was not contradictory as to the events that took place at the time the offence was allegedly committed. However, the said evidence left room for doubts as to the capability of the Appellant hence he ought to benefit from. That common sense dictated that acid could not be poured on complainant's face not giving him a chance to open his eyes to know whether it was Michael



or the complainant who poured acid or committed the assault. That the probation officer had filed a report recommending Appellant was suitable for a non-custodial sentence for a period of 2 years and so the sentence meted out was harsh and excessive. I wish to note at this stage the casualness of the typing the Appellant's submissions as can be read above.

#### **D. Respondent's submissions**

24. It submitted that from the analysis of the prosecution evidence, there were two pronged conclusions one being the inevitable conclusion that the complainant had sustained burnt injuries from the acid spray while the other conclusion was that the Appellant sprayed the complainant with acid. That the ill motive emanating from the land subdivision which the Appellant and his siblings were dissatisfied with and the Appellant went on to issue threats. The Appellant in his defence raised alibi defence which he did not raise at the earliest opportunity and DW2 admitted she did not know what the Appellant did prior to 7pm. Therefore, his alibi was uncorroborated and the prosecution evidence was unshaken by the defence.
25. The complainant had seen and identified the Appellant as his assailant and he failed to account for his whereabouts between 6pm and 7.10pm. For her submissions she relied on the cases of Maurice Okello Kaburu & Another vs Republic [2022] eKLR and Republic vs Teresiah Kilonzo & Another [2017] eKLR. For sentencing, that Section 251 of the [Penal Code](#) provided for punishment of 5 years' imprisonment and does not provide for a fine. That the actions of Appellant spraying the complainant with acid was crude considering the complainant was unarmed and defenseless, was old and more so, his own father. That the 3 years' imprisonment was no excessive.

#### **E. Analysis and determination:**

26. This being the first appellate court, my duty is well spelt out namely; to re-evaluate the evidence tendered before the trial court and subject it to a fresh analysis so as to reach an independent conclusion as to whether or not to uphold the decision of the trial court. For this see the case of Okeno vs Republic [1972] EA 32. In that regard considered the evidence as recorded by the trial court, the grounds of appeal, submissions filed and case law cited. While reanalyzing the above evidence as adduced before the trial court, I am minded of the fact that unlike the trial court, I did not get the benefit of taking evidence from the witnesses first hand and observe their demeanor and for that reason I will give due allowance.
27. In view of the above, I have perused and considered record of appeal together with submissions filed by parties herein and find that following as issues for consideration:
  - a. Whether ingredients for offence of assault were proved beyond reasonable doubt.
  - b. Whether sentence imposed was harsh and excessive.
28. The offence of assault causing actual bodily harm is created under Section 251 of the [Penal Code](#) as follows: "Any person who commits an assault occasioning actual bodily harm is guilty of a misdemeanour and is liable to imprisonment for five years." The essential elements of the offence assault causing actual bodily harm are: assaulting the complainant or victim and occasioning actual bodily harm. See the case of Ndaa v Republic [1984] KLR.
29. I have carefully evaluated the evidence adduced by both the prosecution and the defence that indeed the complainant was the Appellant's father and that on the material day, the complainant extended courtesy to his children whom he called to his farm as he subdivided it in the presence of the surveyor, assistant chief and the village elder. It was less than 2 hours since they subdivision process concluded



that the complainant was returning home when he noted his 4 children from his second wife and whom had threatened him earlier on in the presence of the assistant chief and others after they were dissatisfied with the subdivision of his land.

30. As also brought out by the Appellant in his submissions that before his attack, the complainant was able to clearly see and identify his son from his second wife Michael Gitwe standing in front of him while the Appellant was on the side with his 2 sisters. This therefore proved he was okay and clearly identified his assailants before the attack. They were all armed with the acid and so he grabbed Michael Gitwe and started to struggle with him and that was when they poured the said acid on his head and face. This evidence proves that the complainant did clearly identify his assailants as his sons from his second wife seconds before they poured/sprayed the acid on his head and face.
31. Did the complainant sustain bodily harm? I wish to rely on the passage in Archbold's Criminal Pleading, Evidence and Practice 32<sup>nd</sup> Edition, Page 959 where it is stated as follows: "actual bodily harm includes any hurt or injury calculated to interfere with the health or comfort of the prosecutor" (i.e. complainant). Therefore, the prosecution must, therefore, show that the assault has resulted in actual bodily harm. There must be an intention to assault (mens rea) and the assault must have taken place (actus reus). The complainant testified, as above, of how the Appellant and his brother sprayed him with acid on his face and head and even after his wife gave him first aid, he was rushed to the hospital where he was examined.
32. The doctor concluded he ought to have been admitted and after his discharged, the medication given to him were said to have been 100% effective so he was readmitted again in hospital as proved by the production of his discharge summary reports produced as exhibits. Further evidence was by his outpatient notes and P3 form which were produced herein yet the Appellant never adduced any contradictory evidence that his father did not sustain chemical burns from his face to chest. It is thus my finding that the conviction of the Appellant was sound. I uphold the said conviction and dismiss his appeal against conviction.
33. So, was the sentence meted out to him of 3 years' imprisonment harsh? As correctly submitted by the respondent, Section 251 of the *Penal Code* provides that a person who is guilty of the offence of assault occasioning actual bodily harm commits a misdemeanor and is liable to imprisonment for five years. Sentencing is a discretion of the trial court and being so it must be done judiciously. Guidance on the subject can be derived from the Court of Appeal decision in the case of Shadrack Kipkoech Kogo vs R., Eldoret Criminal Appeal No. 253 of 2003 where it was held that: "sentence is essentially an exercise of discretion by the trial court and for this court to interfere it must be shown that in passing the sentence, the sentencing court took into account an irrelevant factor or that a wrong principle was applied or that short of these, the sentence itself is so excessive and therefore an error of principle must be interfered (see also Sayeka vs R (1989 KLR 306))"
34. The same Court in Bernard Kimani Gacheru vs Republic [2002] eKLR stated that: "It is now settled law, following several authorities by this Court and by the High Court, that sentence is a matter that rests in the discretion of the trial court. Similarly, sentence must depend on the facts of each case. On appeal, the appellate court will not easily interfere with sentence unless, that sentence is manifestly excessive in the circumstances of the case, or that the trial court overlooked some material factor, or took into account some wrong material, or acted on a wrong principle. Even if, the Appellate Court feels that the sentence is heavy and that the Appellate Court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial court on sentence unless, anyone of the matters already states is shown to exist."



- 35. The Appellant was sentenced to serve 3 years' imprisonment and the medical documents produced herein showed the extent of the chemical burns he sustained. These injuries were grave for they also affected his breathing for he had inhaled those chemicals and from the court record availed to me, it is unfortunate that I noted the complainant passed on on 11<sup>th</sup> June 2023 as per his burial permit therein. It is unfortunate that it has not been stated the cause of his death and whether it was as a side effect of the assault herein. Be as it may, considering this was his own biological father for there was no evidence adduced that he was his stepfather, it shows the animosity the Appellant held for him together with his siblings thus not caring of the threats they uttered towards him in the presence of the assistant chief, being the local administration.
- 36. This proves that the said assault was premeditated and well-orchestrated towards their 80-year-old father. To me, the sentence meted out by the trial magistrate who considered all the above was lenient and not harsh at all. I thus do uphold both the conviction and sentence of the trial magistrate and dismiss the appeal herein which is unmerited.

**JUDGEMENT DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 28<sup>TH</sup> DAY OF MAY, 2025.**

.....  
**J.K.NG'ARNG'AR**

**JUDGE**

Judgement delivered in the presence of ..... for the Appellant and Mamba for the Respondent. Siele (Court Assistant)

