



**Munyua & another v Republic (Criminal Appeal E004 of 2025)  
[2025] KEHC 9252 (KLR) (30 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 9252 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
CRIMINAL APPEAL E004 OF 2025  
DR KAVEDZA, J  
JUNE 30, 2025**

**BETWEEN**

**SERAH MUTHONI MUNYUA ..... 1<sup>ST</sup> APPELLANT**

**DENNIS MUNYUA ..... 2<sup>ND</sup> APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal against the original conviction and sentence delivered by Hon. W. Lopokoiyit (S.R.M) on 25th April 2024 at Kibera Chief Magistrate's Court Criminal Case no. E026 of 2022 Republic vs Sarah Muthoni & Dennis Munyua)*

**JUDGMENT**

1. The appellants were jointly charged with the offence of Creating disturbance in a manner likely to cause a breach of peace contrary to section 95[1] [b] of the [Penal Code](#). In count II, the second appellant was charged with assault causing actual bodily harm contrary to section 251 of the [Penal Code](#).
2. After a full trial, they were convicted on count I and the 2<sup>nd</sup> appellant was also convicted on the second count. On count I, they were each sentenced to pay a fine of Ksh.10,000 in default to serve 3 months imprisonment, on count II, the 2<sup>nd</sup> appellant was sentenced to pay a fine of Kshs.20,000 in default to serve 6 months imprisonment.
3. Aggrieved, they filed a petition of appeal challenging the conviction and sentence. In the petition of appeal, they challenged the totality of the prosecution's evidence against which they were convicted. They urged the court to quash their conviction and set aside the sentence imposed.
4. As this is a first appeal, I am required to re-evaluate the evidence tendered in the trial Court and come to an independent conclusion as to whether or not to uphold the convictions and sentences. This task



must have regard to the fact that I never saw or heard the witnesses testify [see *Okeno v Republic* [1973] EA 32].

5. The prosecution called seven [7] witnesses in support of their case. PW1, Leah Mumbi, a resident of Kangemi, testified that on 20th December 2021, she went with others to the Chief's office over a land demarcation dispute. They proceeded to their neighbour's land to place beacons when the 2<sup>nd</sup> appellant, Dennis Munyua, emerged with a machete and slashed her. As she fled, he used a catapult to hit her on the head with a stone. She screamed for help and confirmed that neighbours witnessed the incident. She later sought medical treatment for her injuries.
6. PW2, Daniel Kanja, stated that he had bought land from one Elizabeth Wambui and that a boundary dispute arose with Sarah Muthoni, Dennis's mother. A meeting was arranged by the Chief and a surveyor, but the 1<sup>st</sup> appellant refused to attend. When they began fencing the plot, Sarah shouted and struck people with timber, drawing a crowd. PW2 then emerged with a machete, forcing them, including the Chief, to flee. The 1<sup>st</sup> appellant later directed that the fencing materials be carried into her compound.
7. PW3, Charles Kingatwa, corroborated PW2's account, confirming that Sarah threw stones and Dennis appeared with a machete, chasing PW1 and hitting her until she fell. He testified that PW1 sustained injuries to her ribs.
8. PW4, Dr. George Kunduz, produced PW1's P3 form, noting injuries to her head, shoulder, and chest caused by a blunt object, although he could not confirm the exact weapon.
9. PW5, Chief Rufus Kamau, confirmed the land dispute and that when they arrived at Sarah's compound, she shouted "thief" and Dennis appeared with a machete. He observed PW1's injuries afterward and denied any order to destroy property.
10. PW6, PC Jerald Omuse, stated that he responded to a distress call about an attack on the Chief. He arrested the appellants amid commotion. PW7, Sgt Patrick Simiyu, supported this and produced the catapult as an exhibit. He added that 1<sup>st</sup> appellant slapped an officer and continued to shout "thief" at uniformed police.
11. DW1, Sarah Muthoni, stated that she had planned to meet the Chief but instead found him at her home with men who began demolishing her fence and store. She admitted shouting "thief" but denied any attack, claiming hens were stolen during the commotion.
12. DW2, Dennis Munyua, stated that he only came out after hearing the noise, found men demolishing the fence, and told them they should have consulted them first. He denied wielding a machete and claimed the catapult found was only a wall decoration.
13. I have considered the petition of appeal herein and the parties' rival submissions.
14. From the said analysis, it is my considered view that the main issue for determination is whether the prosecution tendered sufficient evidence to prove the elements of the offences preferred against them.
15. For the first count, the appellants were jointly charged with the offence of creating disturbance in a manner likely to cause a breach of peace contrary to section 95[1] [b] of the *Penal Code* which provides that:-

“Any person who -[b]brawls or in any other manner creates a disturbance in such a manner as is likely to cause a breach of the peace, is guilty of a misdemeanour and is liable to imprisonment for six months.”



16. Therefore, the ingredients of the said offence are that the offender either brawled or created a disturbance in a manner likely to cause a breach of the peace.
17. As to what constitutes a brawl, Muchemi, J in *Jacob Nthiga Ngari v Republic* [2014] eKLR, held that:

“For the offence to be proved [sic], the prosecution must prove that there was a brawl caused by the accused on [sic] that the accused creates disturbance in such a manner as is likely to cause a breach of the peace. A brawl is defined as a rough or noisy quarrel or fight.....”
18. Further, as the court held in *Mule v Republic* [1983] KLR 246, it is not enough to constitute the offence of creating a disturbance if the disturbance is not likely to cause a breach of the peace. The disturbance should have been likely to cause a breach of the peace. The court went on to hold that peace would, for instance refer to the right of wananchi to go about their daily activities without interference.
19. In the present case, PW1 narrated that during the land demarcation exercise, the 2nd appellant emerged armed with a machete, slashed her, and then struck her head with a stone using a catapult, forcing her to scream for help. This violent act took place in full view of neighbours, causing fear and alarm.
20. PW2, PW3, and PW5 corroborated that the 2nd appellant and his mother the 1<sup>st</sup> appellant shouted, threw stones, and brandished the machete, creating a scene that forced even the Chief, who was on official duty, to flee for safety.
21. PW6 and PW7, both police officers, confirmed the chaotic situation. PW7 further testified that Sarah slapped an officer during arrest and continued to shout “thief”, escalating the commotion.
22. Such acts of shouting accusations, attacking PW1, wielding weapons, and resisting lawful arrest demonstrate a violent and tumultuous incident likely to cause a breach of the peace. The effect was that innocent parties, including the Chief and neighbours, were prevented from carrying out lawful activities and were forced to abandon the exercise for their safety.
23. Having weighed all the evidence, the Court is satisfied that the prosecution has proved that the appellants’ conduct meets the threshold under section 95[1][b] of the *Penal Code*. The court rightly found that the disturbance was not only actual but of such nature that it threatened public order, thus warranting a conviction.
24. In count II, the 2<sup>nd</sup> appellant was charged with assault causing actual bodily harm contrary to section 251 of the *Penal Code*.
25. 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.”
26. The essential elements of the offence of assault causing actual bodily harm are clear: there must be an assault directed at the complainant and it must result in actual bodily harm. In *Rex v Donovan* [1934] 2KB 498, Swift J explained that “bodily harm” means any hurt or injury that interferes with the health or comfort of the victim, which need not be permanent but must be more than trifling or transient.
27. The Court has carefully weighed the prosecution’s evidence. The complainant, PW1 Leah Mumbi, knew the 2<sup>nd</sup> appellant Dennis Munyua, and positively recognised him. Her testimony was clear that Dennis emerged with a machete, slashed her, and then used a catapult to strike her head with a stone



as she fled. PW3 corroborated this, confirming that Dennis chased her, struck her until she fell, and hit her on the ribs.

28. PW4, Dr. George Kunduz, produced the P3 form showing injuries to PW1's head, shoulder, and chest. He concluded these injuries were caused by a blunt object and were significant enough to interfere with her health and comfort, satisfying the legal threshold for actual bodily harm.
29. The deliberate nature of the attack demonstrated clear intent, establishing mens rea. The credible testimony of PW1 and PW3, supported by medical evidence, leaves no doubt that the assault occurred and resulted in actual bodily harm.
30. The Court finds that the defence put forward by the appellants did not cast any reasonable doubt on the prosecution's case. The trial court's decision to convict Dennis Munyua on the second count was therefore sound and supported by evidence.
31. Regarding sentence, Section 95[1][b] of the *Penal Code* provides for a sentence of up to six months imprisonment for creating a disturbance likely to cause a breach of the peace. For assault occasioning actual bodily harm, Section 251 provides for up to five years imprisonment.
32. In this case, the trial court imposed a fine of Kshs. 10,000 or three months imprisonment on count one and a fine of Kshs. 20,000 or six months' imprisonment on count two. The Court considered the pre-sentence report and properly exercised its discretion in passing the sentence.
33. Having considered the entire record, this Court finds no reason to interfere with either the conviction or the sentence. The appeal lacks merit and is dismissed in its entirety.

Orders accordingly.

**JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 30<sup>TH</sup> DAY OF JUNE 2025**

**D. KAVEDZA**

**JUDGE**

In the presence of:

Appellants Present

Ms. Atieno h/b for Juma for the Appellants

Mogere for the Respondent

Tonny Court Assistant.

