



REPUBLIC OF KENYA



**KENYA LAW**  
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**Sunguti v Republic (Criminal Appeal E030 of 2025)  
[2025] KEHC 11185 (KLR) (30 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11185 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
CRIMINAL APPEAL E030 OF 2025**

**DR KAVEDZA, J  
JULY 30, 2025**

**BETWEEN**

**CHRISPINE SUNGUTI ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal against the original conviction and sentence delivered on 27th February 2025 by Hon. I.M. Kabunya (SPM) at Kibera Chief Magistrate's Court, Criminal Case No. E864A of 2024 Republic vs Chrispine Sunguti)*

**JUDGMENT**

1. The appellant was charged and, after a full trial, convicted for the offence of assault causing actual bodily harm contrary to section 251 of the *Penal Code*. He was convicted and sentenced to pay a fine of Kshs. 100,000/= in default to serve one year imprisonment.
2. Being aggrieved, he filed an appeal challenging his conviction and sentence. In summary, he challenged the totality of the prosecution's evidence against which he was convicted. He urged the court to quash his conviction and set aside the sentence imposed.
3. 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 v Republic* [1973] EA 32).
4. The Prosecution in this regard called three witnesses in support of their case. PW1, Noreen Khumasali, the appellant's former partner and mother of his child, testified that on 13th January 2024, the appellant, who had previously exhibited violent behaviour, came to her residence and attempted to forcibly take the child. She stated that he assaulted her by punching and strangling her, prompting



- their daughter to scream. A security guard from a nearby premises intervened and stopped the assault. She reported the incident and sought medical treatment.
5. During cross-examination, PW1 stated that the appellant had pushed his way into the house. She admitted that she had denied him access to the child, despite being aware of a court order allowing weekend visitation. She denied fabricating the case. Upon re-examination, she clarified that the appellant was not permitted to collect the child from her residence, and that the agreed exchange usually occurred at a nearby petrol station.
  6. PW2, Dr Kamau Maringa, testified that he examined PW1 and filled out the P3 form. He noted a red swelling on her right eye, redness on the neck and hand, and classified the injuries as "harm" caused by a blunt object. According to treatment notes, the neck injuries were caused by manual strangulation.
  7. PW3, Sgt Ndirangu of Langata Police Station, testified that he received and recorded the complainant's assault report, which had been made three days after the incident.
  8. In his defence, the appellant stated that the complainant was his wife for ten years before they separated in 2020. Following their separation, custody proceedings were initiated, and the court issued orders outlining their respective responsibilities. He claimed that on the date in question, the complainant had blocked his access to the child.
  9. He testified that he went to her residence accompanied by his cousin. Before proceeding, they sought police escort from the gender office at Langata Police Station but were unsuccessful. However, he stated that the police informed the complainant of their intended visit. Upon arrival, he knocked on the door, and the complainant began screaming, prompting intervention by neighbours and security guards. He contended that the allegations were fabricated in an attempt to exclude him from the child's life.
  10. DW2, Bernard Atemo, the appellant's cousin, corroborated the appellant's version of events. He stated that from his position in the vehicle, he observed the appellant at the complainant's door, where the two were communicating through a grill door before PW1 began screaming.
  11. The appellant was convicted and sentenced accordingly.
  12. After considering the grounds of appeal and evidence adduced in the trial Court, I find that the main issue to determine is whether the appellant was rightly convicted for the offence of assault causing actual bodily harm.
  13. Section 251 of the *Penal Code* provides 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.”
  14. The offence of assault causing actual bodily harm requires proof of two essential elements: that there was an assault against the complainant, and that it resulted in actual bodily harm.
  15. As held in *R v Donovan* [1934] 2 KB 498, “bodily harm” includes any injury or hurt which interferes with the health or comfort of the victim and must be more than trifling or transient.
  16. On the first element, PW1 gave a clear and consistent account that the appellant forced his way into her home and physically assaulted her by punching and strangling her during a dispute over child custody. Her evidence remained unshaken during cross-examination and was supported by the testimony of other witnesses. The appellant's use of force was intentional and unlawful, and the existence of a custody dispute did not justify the assault.



17. The second element was proved through the medical evidence of PW2, Dr Kamau Maringa, who examined PW1 and documented visible injuries. They were a swollen right eye, redness on her neck and hand, and signs of strangulation. He confirmed the injuries were caused by blunt force and classified as “harm” under the P3 form. These injuries met the threshold of actual bodily harm, being neither trifling nor transient.
18. The defence did not deny being present but alleged the complaint was fabricated. However, it offered no plausible alternative explanation for the injuries. The trial court correctly concluded that both elements of the offence were established beyond reasonable doubt. The conviction was therefore proper and is upheld.
19. As for sentence, Section 251 of the *Penal Code* provides for up to five years’ imprisonment. The trial court imposed a fine of Kshs. 100,000, in default to serve 12 months’ imprisonment. This was a lawful and proportionate sentence, having considered the pre-sentence report. The conviction and sentence were sound.
20. In the premises, the appeal is found to be lacking in merit and is dismissed in its entirety.  
Orders accordingly.

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

**D. KAVEDZA**

**JUDGE**

In the presence of:

Appellant Present

Onyango for the Appellant

Chebii h/b for Mutuma for the Respondent

Karimi Court Assistant.

