



THE REPUBLIC OF UGANDA
IN THE CHIEF MAGISTRATES COURT OF PALLISA AT PALLISA
CRIMINAL CASE NO. **PAL-00-CR-CO-061-2024**
UGANDA PROSECUTION
VS
KAPIO JOWALI ACCUSED

Before: His Worship Kyembe Karim ESQ
Magistrate G.I

RULING ON PRIMA FACIE CASE

Introduction.

Kapio Jowali herein referred as the accused was arraigned in this court vide charge sheet dated 18th March, 2024 and Sanctioned on the 19th March, 2024 and charged with one count of Assault occasioning actual bodily harm contrary to then, then, **Section 236** of the Penal Code Act Cap 120, and now **Section 219** Cap 128, Red volumes, **Laws of Uganda, 7th edition 2023**.

Factual background.

It was the prosecution's assertion that the accused on the 1st day of December, 2023 at Ngalwe central village, Olok subcounty in pallisa district unlawfully assaulted a one, Outa Tom thereby causing him actual bodily harm.



When the charge was read to him, he denied the same and a plea of NOT GUILTY was accordingly entered.

It is settled law that by denying the charge, the accused put in issue all and every essential ingredient of the offence with which he is being charged.

It also follows that the prosecution bears the onus to prove the ingredients of the charge beyond reasonable doubts as categorically laid out in **MILLER VS MINISTER OF PENSIONS (1947)2 ALLER ER 372.**

This burden does not shift to the accused and the accused is only convicted on the strength of the prosecution case;- Not on the weakness of the accused's defense, as held in **SEKITOLEKO VS UGANDA (1967) EA 531.**

Bearing the above principles in mind, I have also cautioned myself that the accused has no obligation to prove his innocence and any ambiguity in evidence must always be resolved in favour of the accused.

Evidence adduced:

Prosecution called 3 witnesses including the said Outa Tom-Pw1, Lazarus Wambi- Pw2 and Isiko Yasin-Pw3.

Prosecution evidence in a nutshell is that it was December 2023 at around 10:00pm when Pw1 was at his home together with builders building a grass thatched hut that his nephews and nieces started



fighting. That the fight had been prompted by acts of cutting down of the boundary marks and Pw1 attempted to stop the fight, whereupon, the accused came and started beating Pw1. That the accused assaulted Pw1 with a fist by boxing his mouth and that his teeth are shaking upto now. That Pw1 reported the matters to the LC1 authorities of the area who also advised him to report the matters to police, who then arrested the accused and Pw1 given PF3 to go to the hospital and he has since spent UGX. 300,000/= on treatment. That the accused called Pw1 a dog and a pig.

Pw2 on the other hand told court that:

“..the accused was present and he came to separate the fighting people and in the process, he boxed Pw1..”

Pw3 was the clinical officer who examined Pw1 and he told court that:

*“...I examined him and he had a “break” in his lower lip and it looked like one day old...” He exhibited **PF3** as prosecution exhibit and the same was admitted as **PEX3**.*

In **University Of Ceylon VS Fernando (1960), WLR 233** Court observed that the opportunity to cross examine the adversary witness is a fundamental one but where that opportunity is extended and the party does not take it up, does not amount to denial of that opportunity.

In this case, the Accused duly exploited the Opportunity.



On the 14th February, 2026 when the matter came up for hearing, the learned state attorney applied and was granted leave to close the prosecution case. This is therefore a ruling on whether the prosecution has established a prima facie case as to require the accused to defend himself.

The law and analysis.

Section 1 of the Penal Code Act cap 128 defines

*“**harm**” to mean any bodily hurt, disease or disorder whether permanent or temporary;*

In Criminal Appeal No. 0005 OF 2015 (Arising from Koboko Grade One Magistrate’s Court Criminal Case No. 0026 of 2013) UGANDA VERSUS GBONGA DIMBA, MABE ALISA & BAIGA JOHN, Hon. Justice Steven Mubiru expounded on the principles here below.

“...the only distinction between the offence of Common Assault ...and Assault Occasioning Actual Bodily Harm ... is that the latter requires proof of bodily harm or injury which the former does not...”

“...The offence of Common Assault ... is a misdemeanor and accordingly, if the assault is not committed in circumstances for which a greater punishment is provided by the Act, a convict is liable to imprisonment for one year...”



“...the offence of Common Assault ... is minor and cognate to that of Assault Occasioning Actual Bodily Harm ... and a person charged with the latter offence and facts are proved which reduce it to the former, he or she may be convicted of the minor offence although he or she was not charged with it...”

Under **Section 219 of the Penal Code Act** cap 128, any person who commits an assault occasioning actual bodily harm commits a misdemeanor and is liable to imprisonment for five years.

Section 1 of the Penal Code Act cap 128 defines

*“**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;*

In **UGANDA VS GBONGA DIMBA & 2 OTHERS CRIMINAL APPEAL No. 0005 OF 2015 (Arising from Koboko Grade One Magistrate’s Court Criminal Case No. 0026 of 2013)**, Hon. Justice Stephen Mubiru laid out that the prosecution has to prove each of the following essential ingredients beyond reasonable doubts;

Ingredients:

1. there was an unlawful assault of the complainant,
2. as a result of which the complainant sustained bodily injury.
3. The accused caused or participated in causing the bodily injury



In **Uganda v Okech and Anor Criminal Appeal No. 21 of 2015 High Court at Gulu**, it was stated that the evidence must show not only an intention but also an act, done resulting into harm that can legally be categorized as “*grievous harm*.” As distinguished from “*bodily harm*”.

With adequate modification, this court can reasonably borrow and read “*actual bodily harm*” in lieu of “*grievous harm*” for proper context and interpretation of the law.

According to Section 2(d) of the Evidence Act Cap 8

“evidence” denotes the means by which any alleged matter of fact, the truth of which is submitted to investigation, is proved or disproved and includes testimonies by accused persons, admissions, judicial notice, presumptions of law and ocular observation by the court in its judicial capacity.

Article 28(3) a) of the Constitution of the Republic of Uganda 1995 as amended provides that every person who is charged with a criminal offence shall be presumed to be innocent until proved guilty or until that person has pleaded guilty.

Section 101(1) of the Evidence Act, Cap 8 provides that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he or she asserts must prove that those facts which he or she asserts must prove that those facts exist.



Section 101 (2) of the Evidence Act Cap 6 is to the effect that when a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

Therefore, the prosecution has a duty to adduce evidence to prove every ingredient of the offence beyond reasonable doubt so as to secure a conviction against the accused person. Most importantly, the prosecution had to prove actual bodily harm.

According to the case of **Woolmington v DPP [1935] AC 462**, the burden of proof in criminal cases lies on the prosecution.

This burden includes evidence in proof of both ***actus reus*** and ***mensrea***. In **R VS CUNNINGHAM (1957)2 QB 396**, court stated that:

“mensrea is the actual intention to do a particular kind of harm or recklessness as to whether such harm will occur or not.”

In the instant case; Pw2 told court that:

“...the accused was present and he came to separate the fighting people and in the process, he boxed Pw1..”

Pw1 told court that:

“ ... I don't have any dispute with the accused...”

While, Pw3told court that:



“...I examined him and he had a “break” in his lower lip and it looked like one day old...”

I note that that the prosecution evidence shows that it was around 10:00pm, an hour very difficult for identification and that there was an on-going fight between unnamed parties who are not party to this criminal trial. While the prosecution evidence paints the picture that Pw1 was assaulted in the process of separating the said fighting unnamed characters, this court is left in great doubt as to who possibly could have assaulted Pw1.

I have examined evidence of Pw2 to the effect that:

“...the accused was present and he came to separate the fighting people and in the process, he boxed Pw1..”

Something sounds contradictory here and thus living court in great doubt. The evidence as led by the prosecution paints the picture that accused was not party to the fight.

His appearance in the equation seems to have arisen when Pw1 came to separate those who were fighting. In Pw1’s testimony, he has *“...no dispute with the accused...”*

What, then could have possibly prompted the alleged “boxing”? Can court be sure beyond reasonable doubts that the said “boxing” was not landed upon Pw1 by the said fighting unnamed persons during the said



fight of which Pw1 sought to stop? Mindful that this was around 10:00pm as testified by Pw1?

I have not seen evidence to show that the accused had motive to escalate the fight or that the fighting persons resisted the separation, hence justifying the “boxing”, if at all.

I’ve gone this length because, save for the testimony of Pw2 attempting to pin the accused when he told court that:

“...the accused was present and he came to separate the fighting people and in the process, he boxed Pw1..”

Pw1’s testimony to the effect that “...it was around 10:00pm....” It doesn’t take a rocket scientist to know that at 10:00pm, identification is nearly impossible without aid of a flashlight or other light source.

Prosecution did not adduce this evidence and this court cannot presume its existence, to the prejudice of the accused. Prosecution did not show how Pw2 identified the accused at 10:00pm.

I have not seen any corroboration thereof and the rest of the evidence looks exculpatory and in favour of the accused.

Not only does the prosecution evidence fall short of establishing the minimum threshold of a prima facie case in a criminal trial, but this court would like to also sound a word of encouragement to the



prosecution to always examine both the morality and legality of actions by the accused before sanctioning charges.

That be as it may, the demeanor of the prosecution witnesses did not impress court about their credibility.

As a matter of fact, this court is not convinced with, especially, testimony of Pw2 when he told court that:

"..the accused was present and he came to separate the fighting people and in the process, he boxed Pw1.."

Similarly, this court sees no reason as to why the accused would randomly attack Pw1, a person, he testified he has no dispute with.

Pw1 testified that:

"...I was at my home together with builders building a grass thatched hut when my nephews and nieces started fighting. The fight had been prompted by acts of cutting down of the boundary marks and I attempted to stop the fight, whereupon, the accused came and started beating me..."

In **UGANDA VS TWEYANKE (1975) HCB 143**, it was stated that where the prosecution fails to establish a prima facie case, the accused must be acquitted.

From the foregoing analysis, I conclude by saying that I am not satisfied that the prosecution has established a prima facie case. No basic



evidence of *mensrea* or *actus reus* was adduced. It also follows that the accused should not even be placed to his defence. Unfortunately, the accused has religiously appeared in court for more than 2 years now whereas the prosecution did not adduce the slightest modicum of evidence to incriminate him. This court sympathizes with him.

In the circumstances, I hereby find the prosecution has failed to establish a prima facie case and accordingly, I hereby find the Accused NOT GUILTY and ACQUIT him of the offence of Assault occasioning actual bodily harm contrary to then, then, **Section 236** of the Penal Code Act Cap 120, and now **Section 219** Cap 128, Red volumes, **Laws of Uganda, 7th edition 2023** and I order as follows;

1. The accused stands ACQUITTED of the charge leveled against him and he should be set free henceforth unless if he is being held on other lawful charges.
2. The entire sum of money deposited as cash bail for the accused shall be refunded forthwith to the person who deposited the same, upon production of the original bail receipt and proper identification.

I so order.

Date this ____15th____ day of ____APRIL____2026 at PALLISA



H/W KYEMBE KARIM ESQ



Magistrate G.I