

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**IN THE DISTRICT REGISTRY OF MUSOMA**  
**AT MUSOMA**  
**CRIMINAL SESSIONS CASE NO. 23 OF 2022**  
**REPUBLIC**  
**VERSUS**  
**MWITA s/o JUMA @ MACHANGO**

**JUDGEMENT**

*28<sup>th</sup> Nov & 12<sup>th</sup> Dec 2022*

**M. L. Komba, J.:**

The accused person, namely Mwita Juma @ Machango is arraigned before this court for the offence of act intended to cause grievous harm contrary to section 222(a) of the Penal Code [ Cap 16 R.E. 2019] (the Penal Code). It has been alleged by the prosecution that on the 22<sup>nd</sup> September, 2020 at Kiagata Secondary School, within Butiama District with intent to maim, unlawfully, the accused did cause grievous harm to one Majogoro s/o John.

The accused person pleaded not guilty to the charge, thus compelling prosecution to summon two witnesses in discharge of their novel task of proving the case beyond reasonable doubt. During trial, for the prosecution, Ms. Monica Hokororo and Mr. Nico Malekela both learned state attorneys, took active role as far as the Republic's affairs are concerned, whereas Mr.

Baraka Makowe and Ms. Hellen Mabula, both being advocates played a vital vibrant role for defense.

In this case, Majogoro John (the victim) was assaulted and his body was grievously harmed and it is alleged that he was assaulted with malice aforethought by the accused person. It was alleged that on 22<sup>nd</sup> September, 2020 the victim who was a teacher and assistant head master of Kiagata Secondary School was in normal duties of making follow up of defaulters in school attendance for previous days in which the accused person was among them. When he called the name of those defaulters, accused he neither responded nor went to the caller. The victim hit accused one stroke and ordered him to go home and get his parent. Instead of obeying the victim's order, the accused person attacked the victim with machete he hidden.

To prove their case prosecution called two (2) witnesses who are Majogoro s/o John (PW1) and Baraka Wilfred (PW2). While accused fended for himself under oath and called one witness Emanuel Nyamhanga (DW1).

On the prosecution evidence, PW1 Majogoro John testified that on 22/09/2020, Tuesday around 10:00 am, he was making follow up of defaulters at form 3 "C". When he arrived there, he found teacher Baraka Wilfred who was teaching history and permitted him to check defaulters'

students. He testified further that when he called Mwita Juma, who was asked on previous days to come with his parent, he was silent and when asked whereabouts of his parents he was still silent. PW1 decided to give one stroke and ordered him to bring his parents. It was his testimony that when he turned around, accused took machete from his trouser while following PW1 and cut his left shoulder when PW1 trying to escape as he was in the backside of the class, the accused raised machete directed to the head of PW1. PW1 punched the machete using his left hand resulted his hand to be cut and hanging. The accused then disappeared.

PW1 further informed the court that he raised alarm and was assisted by some students and teachers whom took him to Kiagata Police Post where he was given PF3 and went to Kiagata healthy centre where he was given first aid and was referred to Musoma Government hospital. It was his testimony that while at Government hospital doctors had to remove stiches which was dressed by healthy centre and re-do. On the following day that is 23 September, 2020 PW1 was referred to Muhimbili Hospital, Moi Department. He further testified that due to seriousness he started journey on the following day which was 24<sup>th</sup> September, 2020 by using air transport and he arrived at Muhimbili on the same day and started treatment on the spot.

PW1 testified that his hand was planted three (3) metallic objects in order to support it and that he was under medication up to 07 April, 2021 where he was discharged. Metallic objects were removed on February, 2022 and that his hand is not stable as previously. He informed the court that costs for treatment were covered by himself and personal insurance. The court witnessed scar on his body and PW1 identified accused while at the dock and informed the court that he knew accused since 2018 when he joined form one.

When cross examined PW1 stated that the accused was wearing trouser and he pulled machete from his waist. The distance from PW1 and accused was like 4 steps and that he did not expect that he will be cut by accused. He explained that Teacher Baraka was in front of the class while PW1 was at the back. He affirmed that he did not submit in court discharge form neither any medical report but he has them at home.

Baraka Wilfred (PW2) was a teacher at Kiagata Secondary teaching History in 2020. This witness gave his testimony via teleconference from Kilombero Morogoro where he had other official duties. PW2 testified that on 22/09/2020 around 10:00 in the morning he was in class, form 3 "C" teaching History, then came assistant head Master Mr. Majogoro who was making a follow up of defaulter's students and asked them to bring their parents. One

of the names called by Mr. Majogoro is Juma Mwita (accused) who did not bother when his name (Mwita Juma) was called.

He testified further that Mr. Majogoro followed accused at his place, took a stick and gave him one stroke on the buttocks. Mr. Majogoro then informed accused to go and bring his parent. Mwita was going out then turned and remove the machete from his waist in trouser, he followed Mr. Majogoro and raises up the machete targeting the head but Mr. Majogoro punched with left hand which was injured. He was injured on shoulder and arm. The hand was hanging, he insisted. PW2 testified further that they helped Mr. Majogoro and accused ran away. He informed the court that accused was in Form 3 "C", he knows him and gave his physical appearance which resembled the accused who was in court.

During cross examination, PW2 informed the court that on 22<sup>nd</sup> September, 2020 accused was in class when he was teaching history. Machete was in the waist of accused covered by a shirt. Accused was worn school uniform properly (alichomekea) then he removes his shirt and then pull out machete from his waist and that the crime took place nearly break time.

Accused person found with a case to answer and in his defense, under oath he testified as DW1 that on 22 September, 2020 in the morning he was punished by Mr. Majogoro as he missed number in the morning and he was

with other students who were supposed to go and clear cotton tree remaining (kukata magugu) and that they used slasher in cutting the remaining of cotton tree. When he finished, DW1 decided to go to class to see what his fellow student learnt in that morning, he found the history teacher in class who allow him and the others to enter in class after explanation to where they came from.

It was his testimony that while in class the victim entered and informed teacher Baraka he wanted DW1, he said he stood up and the victim started punishing DW1 by a stick. DW1 testified that he took slasher then beat the victim and he (DW1) went out. When he was outside the class he saw blood from his head and also the victim had blood in his left ear. He narrated that he did so because Mr. Majogoro punished him twice but he don't know why he beat his teacher.

DW1 further informed the court that slasher was taken from the school store for cutting cotton remaining and he did not return it to the store. He said he did not had machete, he used slasher and he beat the victim once.

During cross examination he confirmed to use slasher to cut PW1 and fail to link the use of slasher to cut remaining of cotton trees, specifically to remove roots of cotton trees. He insisted they used slasher to remove roots. He informed the court that slasher used to cut PW1 was borrowed from store



by Godfrey so it was not possible for him to return it to the store. He confirmed that they were eight (8) students who were punished by Mr. Majogoro and that the other 7 did nothing. He informed the court that he beat victim as self-defense.

DW2 testified that on 22 September, 2020 while teacher Baraka was in class Mwita and another student came late in class as they were punished outside Mr. Baraka who was teaching History allowed them in, before they sit PW1 came, he called Mwita and started punishing him. DW2 further testified that Mwita was holding a slasher and he beat PW1. It was a slasher which Mwita used to cut PW1 on the shoulder and on hand.

During cross examination DW2 informed the court that DW1 was among ten people were punished and DW1 was among students who went to the store to borrow slasher. DW2 confirmed he was in class when DW1 cut the victim. He did not remember where he was arrested.

Having summarized the evidence adduced by both sides during trial, it is now the noble duty of this court determine whether the offence has been proved as charged.

Upon a charge of criminal offence being preferred against an accused person, the onus is always on the prosecution to prove not only the

commission of the offence but also the link between the said commission of offence and the accused person. The onus never shifts away from the prosecution and no duty is cast on the accused person to establish his innocence. **See the case of Mohamed Haruna @ Mtupeni & Another vs. R**, Criminal Appeal No. 25 of 2007 (unreported) and **Longinus Komba vs. Republic, (1973) TLR 39**. The standard of proof is one beyond reasonable doubt. By that, it means the proof of the charge against an accused person must not leave a shadow of any reasonable doubt that the person charged did actually commit an offence in the manner stated in the information. Accused person is only convicted on the strength of the prosecution case.

The accused is charged of act intended to cause grievous harm, an offence under laws of land, the Penal Code. For easy of reference the provision is reproduced hereunder;

*'S. 222 Any person who, with intent to maim, disfigure or disable any person or to do some grievous harm to any person or to resist or prevent the lawful arrest or detention of any person-*

*(a) **unlawfully wounds or does any grievous harm to any person** by any means whatever;*

*(b) unlawfully attempts in any manner to strike any person with any kind of projectile or with a spear, sword, knife or other dangerous or offensive weapon;*

*(c)....(d) .....(e)..... (f)..... (g)*

*is guilty of an offence, and liable to imprisonment for life.'*



In criminal, there are two elements which need to be proved before conviction, these are *actus reus* and *mens rea*, the former is the objective or external element of the crime simply referred as guilty act while the later is mental element simply referred as guilty mind of the doer. It is basic, that with the exception of strict liability offences, the prosecution side has to prove not only that an act constituting an offence was committed or omitted but also that such commission or omission was accompanied by necessary state of mind, whether intention, negligence or recklessness so as to establish the offence.

The offence of assault causing bodily harm is not one of those offences under strict liability category. As such accused state of mind needed to be proved for a lawful conviction to be established.

Accused before this court is alleged to cause grievous harm to the victim and in proving this, prosecution relied in two witnesses both being eye witness. According to section 143 of the Tanzania Evidence Act, Cap 6, (the Evidence Act) and the case of **Yohana Msigwa vs. Republic** (1990) TLR 148, that no particular number of witnesses is required to prove a particular fact. Prosecution relied on testimony of PW1 and PW2. PW1 who is the victim testified that it was an accused who cut him with a machete while in class. In the case at hand, the evidence of PW1 is corroborated by PW2 (Baraka

Wilfred) who was an eye witness testified that he was in class teaching history when accused cut the victim.

The fact that PW1 is a victim and **named the accused** immediately after the criminal incidence it is credible evidence. See the case of **Marwa Wangiti Mwita and others v Republic**, (2000) TLR, and **Peter Efrain @ Wasambo v R**, Court of Appeal held that the ability of a witness to name a suspect at the earliest opportunity is an important assurance of his reliability.

As per law, proof of a case can be either orally or documentary. If it is orally then it must be by a person who saw it, heard, perceived it or a person of valid opinion. Thus, oral evidence must always be direct. Section 62(1) of the Evidence Act provides thus;

*62.-(1) Oral evidence must, in all cases whatever, be direct; that is to say-*

*(a) if it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it.*

*(b).....*

In law, oral evidence is called the best evidence and superior in credence to other evidence if its witness is credible and trustworthy. Moreover, the best evidence is the one from the victim.

From the case at hand PW1 proved that he was in class where the accused attacked him and cause grievous harm. PW1 was with accused in class so the distance is not more than three steps because of the weapon used to assault, he knows the accused since 2018 when accused joined the school and the victim was assistant head master and he called his name while he is in class before the assault. Because PW1 is the victim then he observed the action from the beginning, it was day time, class hours as the lesson were continuing and the history teacher was teaching. This is collaborated by testimony of PW2 who is the teacher of accused and he was in class while the crime was committed.

Based on the fore mentioned criteria, because the incidence took place on broad day light, witnesses had a privilege of knowing accused persons by names and profile before, the considerable lengthy of attacking events to the victim, I am confident that the visual identification had not been impedimental to the identifying witness. Actus **reus** has been proved.

Now the other part of wrongdoing to be established is ***mens rea*** or guilty mind or malice aforethought. Section 200 of the Penal Code provides as follows:

*"Malice aforethought shall be deemed to be established by evidence proving **any one** or more of the following circumstances-*

*(a) an **intention** to cause the death of **or to do grievous harm to any person**, whether that person is the person actually killed or not;*

*(b) knowledge that the act or omission causing death will probably cause the death of or **grievous harm to some person**, whether that person is the person actually killed or not, although that knowledge is accompanied by indifference whether death or **grievous bodily harm is caused or not**, or by a wish that it may not be caused;*

*(c) an intent to commit an offence punishable with a penalty which is **graver than imprisonment for three years**;*

*(d) an intention by the act or omission to facilitate the flight or escape from custody of any person who has committed or attempted to commit an offence.*

Contrary to most of the accused, the accused in this case when had a time to defend the charge against him, he informed the court that he beat his teacher by using slasher and not machete and that he beat the victim only once. He paused that, he assaulted victim as a self-defense. If at all he was defending himself he used excessive force. Actually, what the accused stated, in my interpretation is a confession. He narrated what he did on the material day.

Bearing in mind the holding of Court of Appeal in the case of **Enock Kipela vs. Republic, Criminal** Appeal No. 150 of 1994 (unreported) about malice aforethought, in a slight variance to the case at hand, the accused (attacker)

declared to cause grievous body harm. I will test factors provided by cited case in the effect that, type of weapon used is machete which is dangerous, the amount of force applied in the assault is too high as the result the hand of the victim was hanging, the victim was inflicted on the shoulder and left hand which punched the blow to head, number of blow was multiple on the shoulder and on the hand and that the victim was serious injured and the accused vanished after the assault.

In considering the facts in the present case as testified by PW1 and PW2, for sure malice aforethought has been fully established. I say so because of the evidence in record show how the victim was assaulted by the accused. The action of carrying a weapon in class and when he was ordered to go out to bring his parent, he moved a short distance, came back, pull up machete and beat the victim proves guilty mind.

In his defence the accused did not dispute to assault PW1, he only claiming that he used slasher to hit PW1 and he hit him only once. As I have ready stated early, to me the accused defence is look like his confession. It is not disputed that the accused assaulted PW1, the accused testimony that he used slasher and he hit PW1 only once, I do not buy it. It is my opinion that the accused said so only to lesser the seriousness of the offence he committed.

From the above analysis, I am convinced that the prosecution has managed to prove the case beyond a reasonable doubt. Therefore, the accused **MWITA s/o JUMA @ MACHANGO** is hereby convicted for the offence of act intended to cause grievous harm contrary to sections 222(a) of the Penal Code Cap 16 R.E 2022.

Dated at **Musoma** on 12<sup>th</sup> December, 2022

  
**M. L. KOMBA**

**Judge**

**12<sup>th</sup> December, 2022**

**SENTENCE**

In this case according to the evidence, the victim (who was a teacher) was attacked and seriously injured by the accused (his student) who was convicted to the offence by this court. According to Mr. Nico the kind of attack was enough and it was indeed a terrible as accused targeted the head of the victim and the blow was punched and chopped the arm.

It is unthinkable that there are students with courage like that of the accused person of attacking a human being, a teacher, by lethal weapon like machete. In this case, it is only by luck Majogoro John was in the capacity to hurry to proper treatment at Muhimbili National Hospital.




The issue of age of accused as submitted by Mr. Makowe cannot be a mitigating factor. Students must be highly disciplined while at school and at all the time. The victim is incapacitated to some activities as he cannot use his left hand. He was forced to shift residence and changed his job due to the infirmities or disabilities suffered following the attack, it is therefore a matter of balancing interests. I know there are students with habit like this of the accused in this case, they must know that punishment for such offence is severe so that they should stop.

All aggravating and mitigation factors taken; I think it meets justice of this case to punish the offender equally to his offence. The statutory sentence for the offence of attempted murder is life imprisonment but, in this case, this Court imposes the following sentences after considering aggravated factors. The accused is sentenced to thirty years imprisonment and further more to compensate the victim a total sum of Tanzanian shillings five million (5,000,000/) within three months.

It is so ordered.



  
**M. L. KOMBA**  
**JUDGE**

**12<sup>th</sup> December, 2022**

This judgment has been delivered this 12<sup>th</sup> December, 2022 in open court in the presence of Ms. Monica Hokororo and Mr. Nico Malekela learned State Attorneys for the prosecution on one hand and learned Advocates Mr. Baraka Makowe for the accused.

Accused person is reminded of his right of appeal.



  
**M. L. KOMBA**

**JUDGE**

**12<sup>th</sup> December, 2022**