

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
MUSOMA DISTRICT REGISTRY**

**AT BUNDA**

**CRIMINAL SESSIONS CASE NO. 79 OF 2021**

**THE REPUBLIC**

**VERSUS**

**AUGUSTINO NYAMHANGA**

**JUDGMENT**

*10<sup>th</sup> & 11<sup>th</sup> MARCH, 2022.*

**A. A. MBAGWA, J.**

The accused Augustino Nyamhanga stands charged with the offence of Acts Intended to Cause Grievous Harm contrary to section 222 (a) of the Penal Code.

The accused is a resident of Bunda and a government employee as a teacher at Nyiindo Secondary School within the township of Bunda.

It is alleged that the accused on the 31<sup>st</sup> day of August, 2019 at NMB Bank area within Bunda district in Mara region, with intent to cause grievous harm unlawfully maimed Emmanuel s/o Samson @ Mwita.

When the matter was called on for plea taking and preliminary hearing on 22<sup>nd</sup> October, 2021, the accused person pleaded not guilty before this court as such, the matter was adjourned and scheduled for a full trial.

On the 8<sup>th</sup> day of March, 2022 this matter came for hearing. The accused who was out on bail was present in court but the hearing could not proceed due to what the State Attorney said that his key witness (the victim) did not show up and that it was likely the victim was no longer interested in the case. He thus prayed for adjournment in order to trace the victim. As such, the hearing was adjourned and fixed on the following day i.e. 09/03/2022.

On 09/03/2022 when the matter was called on for hearing, the prosecutions side had all its witnesses but accused was absent. Both State Attorney and defence counsel informed the court that the accused was within the court precincts but he just disappeared shortly before the court session started. Mr. Emmanuel Mng'arwe, the learned defence counsel told the court that he called via phone and at first the accused told him that he had just gone to buy airtime and that he would be back shortly but when called him for the second time, someone picked the phone and told him that the accused has got an emergency and therefore he had been taken to hospital. Later on, the accused switched off his phone. In the circumstances, the court adjourned the matter and fixed it for hearing on the following day i.e. 10/03/2022. Besides, the court ordered the accused to be arrested and brought before the court.

The efforts to arrest him did not yield fruitful results. The court was informed that when the investigator called him on 10/03/2022 in the morning, he replied him that he had gone to Musoma to seek advice. Thus, when the matter came for hearing on 10/03/2022, this court ordered the trial to continue in absence of the accused in terms of section 197(a) of the Criminal Procedure Act.

The prosecutions side paraded three witnesses namely, PW1 EMMANUEL SAMSON MWITA (the victim), PW2 G3419 D/CPL ABDULKARIM, a police officer who arrested and rescued the accused from being attacked by the mob and PW3 DR. NIMROD PHARES MZUMA, a doctor who attended the victim at Bunda Council Designated Hospital. Further, the prosecutions tendered in evidence two documentary exhibits to wit, PF3 of the victim (P1) and a referral letter (P2) referring the victim to Bugando hospital for further medical attention.

The prosecutions account is to the effect that on 31<sup>st</sup> day of August, 2019 at around 19:30hrs while at NMB Bank area within Bunda township, Emmanuel Samson @ Mwita (PW1) heard an alarm of a person who was crying for help. He and his colleague Chacha went to the place where the alarm was coming. They found Augustino Nyamhanga, the accused beating one Christmas on the ground that his cart had scratched the

Nyamhanga's car. PW1 requested Nyamhanga to spare Christmas as he had beaten him enough but Nyamhanga was agitated and started chasing him. Eventually, Nyamhanga caught PW1 and stabbed him with a knife on the back and left leg.

Following the injuries sustained, PW1 was rushed to Bunda Council Designate Hospital where he was attended by Dr. Mzuma (PW3). Later on, as the injury exacerbated, PW1 was referred to Bugando Hospital where he underwent surgery and his left leg was amputated. PW1's evidence on the injury sustained was corroborated PW3. He stated that he attended PW1 on the fateful day at around 20:00hrs and he observed two deep wounds on his back and left leg below the knee. Further, PW3 tendered a PF3 (P1) and referral letter to Bugando (P2) both showing the seriousness of injuries that PW1 sustained.

PW2 testified that he arrested the accused at the scene of crime and surrendered him to Bunda Police Station. PW2 said that the accused was full of blood and was holding a knife with blood stains which the accused handed to him. PW2 said that he gave the knife to the investigator as such he did not produce it in evidence on the ground that it was under the custody of the investigator. PW2 further testified that when he arrived at the

scene, he eye-witnessed the accused holding the victim's hands with one hand while the other was holding a knife.

Moreover, PW3 Dr. Nimrod Mzuma said that on 31<sup>st</sup> August 2019 at around 20:00hrs while attending Emmanuel Samson PW1, he told him that he had been attacked by Augustino Nyamhanga.

During final submissions, Mr. Emmanuel Mng'arwe said that the prosecution evidence was not cogent enough to warrant conviction because of the following reasons; one, that PW1 said that he identified the accused by the aid of traffic lights whilst PW2 said that in 2019 there were no traffic lights in Bunda, two, the knife which was an important piece of evidence was not tendered and three, the person who was attended at Bunda Council Designated Hospital is Emmanuel Samson whereas the victim as per the charge is Emmanuel Samson @Mwita.

Responding to the defence submission, Mr. Frank Nchanila, learned State Attorney, was opined that, on the strength of the prosecution's evidence, the charge was proved beyond reasonable doubt.

He said that the prosecutions were supposed to establish that Augustino Nyamhanga was the one who caused grievous harm, a duty which it sufficiently discharged through PW1, the victim.

With regard to identification, Mr. Nchanila said there was a series of events which enabled the victim to identify the accused. He argued that the offence was committed at night but the witness explained that there was enough light including electricity lights from the houses surrounding the area. Nchanila contended that the availability of light was corroborated by PW2. With respect to whether in 2019 there were traffic lights in Bunda, Mr. Nchanila opined that the contradictions in the testimonies of PW1 and PW2 are just minor which do not go to the root of the matter

Further, the State Attorney submitted that PW3 said that when he was attending him, PW1 told him that he was injured by the accused. As such, PW1 is credible on the identification because he mentioned his culprit at the earliest stage. Mr. Nchanila continued to argue that PW3 is competent person because he is registered by the Ministry of Health.

Lastly, Mr. Nchanila insisted that the victim (PW1) is the very person whom PW3 attended at the hospital. He said that the additional name of Mwita is an alias name.

After summing up of the case, all the three assessors returned a verdict of guilty. Their reason was that the victim was grievously injured and the victim properly identified the accused Augustino Nyamhanga

Upon dispassionate appraisal of the evidence and submissions made by the parties, the pivotal issues for determination are two, whether the victim was grievously harmed and whether the harm was caused by the accused.

It is undisputed in this case that the victim (PW1) was grievously harmed. He was stabbed on his back and left leg. The wound on the leg was so grave to the extent that he underwent surgery at Bugando Hospital which resulted in the amputation of his leg. PW1 showed to the court his stab wound on the back and the artificial left leg he is using. Thus, the first issue is positively answered

With regard to whether it is the accused Augustino Nyamhanga who caused the alleged grievous harm, the evidence is abundant. PW1 properly identified the accused as he knew him before the incident. Furthermore, he spent sometimes wrestling with the accused. In addition, PW2 said that he arrested the accused at the scene of crime. It has to be noted that where an accused is arrested at the scene of crime, the issue of identification become immaterial. Thus, since the accused was arrested at the scene of crime, I do not find it relevant to belabour the identification evidence

In view of the above, I am of the considered opinion that the prosecutions have proved the case beyond reasonable doubt. I thus find the accused

guilty and consequently convict the accused Augustino Nyamhanga of Acts Intended to Cause Grievous Harm contrary to section 222 (a) of the Penal Code.

It is so ordered.

The right of appeal is expressed.



  
**A. A. Mbagwa**

**JUDGE**

**11/03/2022**