THE REPUBLIC OF UGANDA

IN THE CHIEF MAGISTRATES COURT OF NWOYA AT ATIAK

CRIMINAL CASE NO CO 029/ 2024

UGANDA :: PROSECUTION

VS

ORYEM NICHOLAS LAW :: ACCUSED

Before: His Worship Kyembe Karim ESQ

Learned Magistrate G.I

JUDGMENT

Introduction.

By charge sheet dated 02ND /03/ 2024, and sanctioned on 3RD /03/ 2024, the Accused was charged with one count of DOING GRIEVOUS HARM Contrary to, then, **Section 219** of the Penal Code Act Cap 120, and now **Section 202** Cap 128 Laws of Uganda, Red volumes, 2024 revised edition.

Brief background.

It was the prosecution's allegation that the accused, on the 1st day of March, 2024 at Pupwonya South village in Amuru district unlawfully did grievous harm to a one, Okot David.

When the charges were read to the Accused, he denied the Charges and a plea of NOT GUILTY was accordingly entered.

By denying the Charges, the accused placed in issue all and every essential ingredient of the offence with which he is being charged.

The prosecution bears the burden to prove the ingredients beyond reasonable doubts as laid out in the case of **Miller VS Minister Of Pensions (1947)2 ALLER ER AT 372**.

The burden does not shift to the accused and the accused is only convicted on the strength of the prosecution evidence and not the weakness of the Accused's defence as laid out in **Sekitoleko VS Uganda (1967) EA at 531**.

Bearing the above principles in mind, I am also aware and I have cautioned myself that the accused has no obligation to prove his innocence.

Prosecution case:

In attempt to prove the charge, the prosecution first called the said **Okot David** who testified as **Pw1.**

Pw1 told court that he knows the accused who is the husband to Pw1's Uncle's daughter. That on the said 1st/03/2024, they (Pw1 and others) found the accused on the veranda of his mother at around 6:00am whereupon, they asked him what he was doing, to which he (accused) responded that *"wait until the sun comes and I will explain."* That the accused's mother in-law implored him to get inside the house and sleep then comes later to explain his issue.

That they (Pw1 and others) then called the step mother together with the mother in-law for a meeting, wherein, the accused intimated that he desired the wife to first go back to her mother until he (accused) gets relieved and at that point, they also realized that the said wife was also pregnant.

That on their way to the accused's home, he had given the key to his wife, as for him, he took another route. Upon reaching the said home, they met the accused's sister and her grandmother, who asked them what, had brought them and then welcomed them. That at that point, the accused also appeared with a bow and arrow and said *"today I will shoot someone"* as he entered the house wherefrom, they were picking the said wife's items to assist during pregnancy.

That the accused then aimed at Pw1's abdomen and shot while restating that *"I will shoot someone."* That the people who had gathered apprehended him (accused) and called the LC1 chairman since he was already aware of the matters and he advised them to take the accused to Atiak Police station while Pw1 was taken to seek medical attention.

On cross-examination by the accused, Pw1 further told court that they didn't have any grudge and that the accused had forethought of killing someone despite being dissuaded by many people and that the Bow and arrow used were at the police station.

Prosecution also called a one, **Nyeko Charles** who testified as the 2nd prosecution witness and his evidence was taken down as **Pw2.**

Pw2 re-echoed the testimony of Pw1 and added that when they tried to apprehend the accused, he (accused) shot again towards Pw2 and also towards a one, Nokrach Jimmy but fortunately, he missed the targets. That when the accused was finally apprehended, the arrows and the bow were taken to police by the LC1 chairman.

On cross-examination, Pw2 testified further that the accused's grandmother and a certain lady are the ones who authorized them to access the accused's house to help his (accused's) pregnant wife, a one

Aye, whom he (accused) had said he no longer wanted to collect her items to assist with the pregnancy. That while still inside the house, Pw2 heard Pw1 crying from outside stating that *"he has shot me"* and on looking outside, Pw2 saw the accused holding the bow and arrow and the people who had gathered removed the arrow from Pw1 and that it was only the accused who had a bow and arrow.

Prosecution then called **No. 68372- Akanyo Teddy** who testified as the 3rd prosecution witness and her evidence was taken down as **Pw3.**

She told court that she came to know the accused on the 1st march, 2024 when the Lc1 chairman of Pupwonya South came with him to Atiak Police on the allegation that he had injured Pw1. That they issued a **PF3** to the injured Pw1 and the bow and arrow which were also brought were received as exhibits at police and the same were admitted in court as **PEX1** and **PEX2.**

On cross-examination, Pw3 further told court that all the exhibits were brought to the police by the LC1 chairman and from account of all the witnesses, including the accused's wife, Pw3 established that they are the ones that were used in injuring Pw1 and that it is the accused who injured the said Pw1.

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.

Having heard all the evidence from the prosecution this court, on the 29th /08/2024 ruled that a prima facie case had been established, hence the accused placed to his defence.

All the three modes of defence were explained to the accused. That is;

1. Give evidence on Oath, whereby she will be subjected to cross examination by the prosecution.
2. Give evidence not on Oath whereby the accused will not be subject to cross examination.
3. Elect to keep silent.

Defence case:

The Accused opted to give evidence on Oath and his testimony was taken down as **Dw1- Oryem Nicholas Law.**

He first testified that on the said 1st March, 2024, at around 8:00am, he moved with his wife to go to her father's place, having left him some weeks back. That he didn't remember whether he met her on the way and then proceeded with her and upon reaching there at around 8:30pm, he told the people he found there what had brought him as regards what his said wife had told him to the effect that when she had gone for maternity check-ups, that the baby was not in the right position.

At that point, he lost the story line and changed story. He now told court that they came and found when people had broken into his home, which prompted him to open another door because, it is his wife who had the the key. That he then asked Pw1 what was happening and that Pw1 responded that he is not the one responsible, but a one, Nyeko Charles-Pw2.

That he then asked the said Pw2 as to why he would break into his house while standing outside and Pw1 was sited with his (the accused's) grandmother and he (Dw1) told them that if they insist on taking things by force, then he was going to call the chairman. That when he(accused) completed sweeping the house, a one, Otto came with a bow and arrow towards him and instructed him (accused) to stay where he was, to which, the accused replied that it is his home and the said Otto had no authority over it.

That when Dw1 attempted to move, the said Otto held his hand and pulled him backwards while he (accused) was holding one arrow which later injured him and he started bleeding.

On cross-examination, Dw1 testified further that it is Nyeko Charles (Pw2), Onen Julio, Nockrach Jimmy and a one, Atim Julius who came to his house, having come to pick something and that he was aware and even gave them one key but instead, they started ferrying other items, to which Dw1 asked them to return but they refused.

He confirmed that the bow and arrow were his and it is Pw1 who removed the arrow. He concluded maintaining that he did not shoot the said Pw1.

THE LAW AND ANALYSIS OF EVIDENCE

The offence of doing grievous harm was created under the then, **Section 219** of the Penal Code Act Cap 120, and now **Section 202** Cap 128 Laws of Uganda, Red volumes, 2024 revised edition.

Under that section, the prosecution has a duty to prove ingredients of grievous harm found in formally, **Section 2,** now **Section 1** of the Penal Code Act cap 128. Grievous harm is defined therein as

"any harm which amounts to a maim, or dangerous harm, or seriously or permanently injures health or likely to injure health. It extends to permanent disfigurement, or permanent injury to any external or internal organ or sense."

According to Section 2 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.

Section 1 of the Penal Code Act cap 128 defines **"harm"** to mean any bodily hurt, disease or disorder whether permanent or temporary;

The said section **Section 202** Cap 128 Laws of Uganda, Red volumes, 2024 revised edition provides that; ***"Any person who unlawfully does grievous harm to another commits a felony and is liable to imprisonment for seven years."***

The prosecution had to prove each of the following essential ingredients beyond reasonable doubt;

Ingredients

1. The victim sustained grievous harm.
2. The harm was caused unlawfully.
3. The accused caused or participated in causing the grievous harm

Before I delve into the evaluation of evidence, I am also mindful that it is trite that when a person is charged with an offence and facts are proved

which reduce it to a minor cognate offence; s/he may be convicted of a minor offence although s/he was not charged with it.

Related to the offence with which the accused is being charged in this case, is a minor but cognate offence of assault occasioning actual bodily harm contrary to then **Section 227** of the penal code Act Cap 120, now **Section 219** of the penal code Act Cap 128, Laws of Uganda, Red volumes, 2024 revised edition; Any person who commits an assault occasioning actual bodily harm commits a misdemeanor and is liable to imprisonment for five years.

I have first examined the two related offences, because they are oftentimes interchanged and confused with each other, whereas the evidence might tend to prove the other and one is a misdemeanor while the other is a felony, while also, one offence attracts a more severer sentence than the other.

In **Funo & Ors. vs. Uganda; H.C. Crim. Appeals Nos. 62 – 69 of 1967; [1967] E.A. 632** Sir UDO UDOMA, C.J. in a nutshell discussed that an accused can be convicted of a lesser charge if the evidence adduced supports the conviction. In that case, the learned C.J. had instead convicted the accused of the minor cognate offence of theft, instead of that of robbery.

In the instant case before me, prosecution charged the accused with the offence of doing grievous harm contrary to the then, **Section 219** of the Penal Code Act Cap 120, and now **Section 202**, Cap 128 Laws of Uganda, Red volumes, 2024 revised edition.

Ingredient 1: **The victim sustained grievous harm.**

The general presumption is that every harm is unlawful unless there is evidence that the accused needed to defend himself.

The first element required proof that the injury sustained by the complaint was caused unlawfully and amounted in law as grievous in accordance with the definition set out, formally in **Section 2,** now **Section 1 of PCA** already stated above. This requires proof of an intentional wrongful act against another without legal justification.

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 in fact.

Pw1 *testified that:*

> *"…the accused then aimed at my abdomen and shot while restating that* ***"I will shoot someone."*** *The people who had gathered then apprehended him and called the LC1 chairman…"*

PW2 testified that:

> *"…when we tried to apprehend the accused, he shot again towards me and also towards a one, Nokrach Jimmy but fortunately, he missed the targets. When the accused was finally apprehended, the arrows and the bow were taken to police by the LC1 chairman.*

In his defence while denying shooting the arrow and testifying as Dw1, the accused told court that:

> *"…a one, Otto came with a bow and arrow towards me and instructed me to stay where I was, to which, I replied that it is my home and you (Otto) have no authority over it. When I attempted to move, the said Otto held my hand and pulled me backwards while I was holding one arrow which later injured me and I started bleeding…"*

I listened to evidence of Pw1, Pw2 and Dw1 and I am satisfied that there was an encounter between the accused and the complainant (Pw1). As to whether that encounter resulted into grievous harm, that is another issue that the prosecution ought to prove beyond reasonable doubts.

I have examined the evidence of both Pw1 and Pw2. While the witnesses classified the injuries as grievous harm, I am hesitant to agree with them. No medical expert was called as a witness to explain the contents of **PEX1** which attempts to describe the alleged harm inflicted upon the complainant.

As I mentioned from the onset, it is the prosecution's duty to prove its case beyond reasonable doubts.

However, this court, by ocular observation saw some injuries around the abdominal area of the complainant as corroborated by testimony of Pw1 and Pw2. The same looked like a scar resulting from a cut by a sharp object of a similar size and shape of the arrow exhibited in **PEX2.**

As to whether whoever occasioned those injuries had the necessary *mensrea,* the complainant, testifying as Pw1 told court that;

> *"…the accused then aimed at my abdomen and shot while restating that* ***"I will shoot someone…"***

There is no doubt left in my mind that whoever shot the fatal arrow, besides uttering the aforesaid words, also aimed at a very sensitive part of the body,-the abdomen. I find no other explanation other than that of a criminal intent to inflict injuries upon the complainant. Bows and arrows, by their nature do not bind themselves together as to create a sling.

A pro-active act must have been involved and I have not seen any evidence to suggest that the complainant was shot by accident or under mistaken identities.

While the position of injury indeed could have posed life threatening risks, certainly the complainant was not permanently maimed from the ocular observation of court as to amount to a grievous harm. In the humble view of this court, the injuries suffered point to *"bodily harm"* as opposed to *"grievous harm".*

In **Lomodo Francis V Uganda Criminal Appeal 13 of 2013 Arising From Kaabong -Kotido Criminal Case no. 38 Of 2013 HON. LADY JUSTICE HENRIETTA WOLAYO** found that the injuries suffered by the complainant did not fit the description of grievous harm and instead found assault occasioning bodily harm.

This court is equally inclined to find that the injuries proved by the prosecution did not meet the minimum threshold to be categorized as grievous harm.

This ingredient was not proven to the satisfaction of court. This court is however satisfied that the evidence establishes that an assault occasioning bodily harm occurred.

<u>Ingredient 2:</u> The harm was caused unlawfully.

As aforesaid, it is the general presumption that every harm is unlawful unless there is evidence that the accused needed to defend himself or acted under provocation or any other lawful excuse.

The accused's defence from what I gathered from his testimony was a general denial. An accused who sets up a defence does not have a duty to prove it, but it's the duty of the prosecution to disprove it as held in ***Vicent Rwamaro v. Uganda [1988-90] HCB 70.***

The question of whether a person acted in self-defense or under provocation or not or any other lawful excuse is one of fact and each case must be considered and judged on its peculiar facts and surrounding circumstances as a whole.

An accused person raising a defense is not expected to prove it beyond reasonable doubt. All he has to do is adduce the facts alleged to constitute the defense.

Once some evidence is adduced as to make the defense available to the accused, it is up to the prosecution to disprove it. The defense succeeds if it raises some reasonable doubt in the mind of the court as to whether there is a right of self-defense or whether there was provocation from the complainant or in this case, whether it is true that the complainant was shot by someone else.

Similarly, it is an accepted proposition of law that a person cannot avail himself or herself of the plea of self-defense when he or she was himself or herself the aggressor and willfully brought on himself without legal excuse, the necessity of inflicting harm as stated in **Uganda v Okech and Anor Criminal Appeal No. 21 of 2015 High Court at Gulu**.

In the instant case, the evidence of both prosecution and defence witnesses point to the fact that the encounter ensued after the accused sought to have his said wife vacate the home. It is unclear what aggravated the situation into a fracas resulting into shooting of the arrow. Pw1 testified that the accused is fond of smoking intoxicants like marijuana. That evidence was not discredited in cross-examination. The accused, however, did not raise intoxication as a defence, and even if he did, I doubt it would have been helpful to him, since, self-intoxication purposely to enhance one's nerve to commit an offence defeats the entire defence.

Specifically, Pw2 testified that:

> *"…while still inside the house, I heard Pw1 crying from outside stating that "he has shot me" and on looking outside, I saw the accused holding the bow and arrow and the people who had gathered removed the arrow from Pw1 and it was only the accused who had a bow and arrow…"*
>
> *"… when we tried to apprehend the accused, he (accused) shot again towards me and also towards a one, Nokrach Jimmy but fortunately, he missed the targets…"*

This court is satisfied that not only did the accused shoot the complainant with the arrow, but evidence has shown that he also attempted to shoot Pw2 but he missed. I am satisfied with the identification by Pw2. Dw1's denials are suspicious and generally incoherent.

That be as it may, this court is satisfied that the confrontation was clearly prompted by the accused when he sought to ***"shoot someone"*** when the complainant and others were helping his wife to remove items from the house to help with her maternity.

For that reason, the defence of general denial is hereby rejected. Similarly, this court did not find evidence to show that the accused was acting in self defence. Neither was provocation raised as a defence.

As such, this court is satisfied that the prosecution proved this ingredient beyond reasonable doubts.

Ingredient 3: The accused caused or participated in causing the grievous harm.

In evaluation of ingredient 1, I have already found that the prosecution proved *"bodily harm"* as opposed to *"grievous harm".*

As regards participation of the accused, both Pw1 and Pw2 and even the accused himself gave evidence identifying the accused as having been present at the crime scene.

Pw2 testified that:

> *"… when we tried to apprehend the accused, he (accused) shot again towards me and also towards a one, Nokrach Jimmy but fortunately, he missed the targets…"*

No doubt is left in my mind that Pw2 ably identified the accused and also saw him shoot towards him and the said Nokrach Jimmy.

The accused's defence of a general denial having been rejected, this court is also satisfied that the prosecution proved this ingredient beyond reasonable doubts.

Having found as I have, I make the following orders.

1. The accused is hereby CONVICTED of a minor and cognate offence of assault occasioning actual bodily harm contrary to then **Section 227** of the penal code Act Cap 120, now **Section 219** of the penal code Act Cap 128, Laws of Uganda, Red volumes, 2024 revised edition.
2. The accused, now convict will remain on remand until sentencing.
3. Sentencing will be done after hearing prosecution on aggravation and the convict on mitigation.

I so order.

Dated at Atiak this 25th day of November 2024.

HW. KK

HW KYEMBE KARIM ESQ.

Magistrate G.I