

THE REPUBLIC OF UGANDA
IN THE CHIEF MAGISTRATES COURT OF PALLISA AT PALLISA
CRIMINAL CASE NO **PAL-00-CR-CO-51-2024**
UGANDA PROSECUTION
VS
OTTU BEN ACCUSED

Before: His Worship Kyembe Karim ESQ

Learned Magistrate G.I

JUDGMENT

Introduction.

The accused was arraigned in this hon. Court vide a charge sheet dated 5th /03/ 2024, and sanctioned on 6th /03/ 2024, and 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, 2023 revised edition.

Brief background.

It was the prosecution's allegation that the accused, on the 7th day of February, 2024 at Nagule village, Puti-Puti sub county, in Pallisa District unlawfully did grievous harm to a one, Orem Martin.

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

It is trite that by denying the Charge, 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 **Orem Martin** who testified as **Pw1**.

Pw1 told court that he knows the accused person who is his neighbor with a distance of about 70 meters between their homesteads. That on the said day, around 8:00 am, Pw1 left his home to go to his cassava garden which is about 70 meters away and he found two huge pigs which belong to the accused and they were vandalizing the said cassava garden. That Pw1 then called his son, a one, Okia who came and herded the said pigs back to the accused's place. That when they reached the accused's house and reported to him how his pigs had vandalized the cassava garden, the accused approached Pw1, pulled out a panga from inside his trouser and he wanted to cut Pw1's head, to which, Pw1 used

his arm to shield himself and that's when the panga cut a deep wound on the left hand. That when the accused attempted to swing the panga again, Pw1 used his right hand and grabbed the panga tight and Pw1's son who was about 12 yards away started raising alarm. By the time witnesses responded to the alarm, Pw1 was still holding on to the panga to save his life. That one of the witnesses, a one, Oluku Micheal who responded to the alarm took away the panga from the accused and handed it to Pw1 who then rushed it to the chairperson's home, but he was not there and then he proceeded to the defence secretary's home, who then called the chairperson and he advised them to arrest the accused and take him to police. That at police, Pw1 was given a PF3 and the accused also followed him at police and that's where he was arrested.

On cross-examination, the unrepresented accused led questions, albeit structured amateurishly eliciting testimony as to whether it was a deliberate cutting or the two were struggling for the panga and the cuts were accidental. Pw1 was evasive and court took due judicial notice.

Documents relating to Medical bills incurred by Pw1 were collectively admitted as **PEX1**, Discharge form admitted as **PEX2**, and proof of other expenses incurred admitted as **PEX3**.

Pw2 was **Okia Paul** -12 years of age. After conducting a voire dire, this court ruled that he was a competent witness. Pw2 re-echoed testimony of Pw1 and On cross-examination, he told court that Pw1 was only cut once.

Pw3- Oluk Micheal testified as to how he appeared at the scene in response to an alarm and he took away the panga from the accused.

Pw4- Cissy Muhammed was the defence secretary and he testified as how he was approached by Pw1 after suffering the cuts.

Pw5- Omweru Asuman was the medical officer who testified as to how he examined the cuts suffered by Pw1.

In this case the accused duly exploited the opportunity of cross examining the prosecution witnesses as espoused in; **University Of Ceylon VS Fernando (1960), WLR 233**

Having heard all the evidence from the prosecution this court, on the 6th/May/2025 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 he 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- Ottu Ben.**

He told court that on the said day, while he was sick and using a walking stick, he heard Pw1 shouting utterances as to why his pigs had

destroyed his cassava garden. That upon inquiry as to how he came to know that it is Dw1's pigs, Pw1 started untethering Dw1's pig. That Dw1 then picked his panga which was on the veranda and upon notice of picking the panga, Pw1 attacked Dw1 asking why he had picked the panga and a tussle broke out. That Dw1 who is sickly, battling diabetes did not cut Pw1 but the wounds suffered arose as the two struggled for the panga. He also exhibited his own PF3 and his own photo of the injuries he suffered, respectively as **DEX1** and **DEX2**.

Dw2- Apolot Mary testified as to how she saw Pw1 and Pw2 subdue the accused and they were stepping on him. That both Dw1 and Pw1 were bleeding. The accused thereupon closed his defence.

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, 2023 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 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:

“...when we reached the accused’s house and reported to him how his pigs had vandalized the cassava garden, the accused approached me, pulled out a panga from inside his trouser and he wanted to cut my head, to which, I used my arm to shield myself and that’s when the panga cut a deep wound on my left hand. When the accused attempted to swing the panga again, I used my right hand and grabbed the panga tight ...”

Testifying in response to that evidence in his defence as **Dw1** the accused told court that:

“...I then picked my panga which was on the veranda and upon notice of me picking the panga, Pw1 attacked me asking why I had picked the panga and a tussle broke out. I am sickly, battling diabetes and I did not cut Pw1 but the wounds suffered arose as the two of us struggled for the panga...”

Dw1 further exhibited his own PF3 and his own photo of the injuries he suffered, respectively as **DEX1** and **DEX2**.

By that evidence, there is no doubt left in my mind that as a matter of fact, both the complainant and the accused suffered injuries resulting from the said panga.

While the observation by court and the exhibited pictures and PF3 show deep injuries, 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.

Ingredient 2: 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 is the one who attacked the accused with a purpose of disarming him of the panga and the cuts occurred due to the ensuing tussle.

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

complainant attempted to disarm the accused of his panga. The testimony of the prosecution also shows that it is the complainant who approached the accused' homestead who is sickly and weak.

Specifically, Dw1 testified that:

“...I then picked my panga which was on the veranda and upon notice of me picking the panga, Pw1 attacked me asking why I had picked the panga and a tussle broke out. I am sickly, battling diabetes and I did not cut Pw1 but the wounds suffered arose as the two of us struggled for the panga...”

This court is satisfied that not only did the complainant bring himself and confront the accused in his home, but evidence has shown that both accused and complainant suffered injuries. Pw1's testimony to the effect that the accused pulled out the panga from his trouser is suspicious and generally incoherent. I am not satisfied as to why Pw1 did not attempt to flee and instead held on to a sharp panga for all that long awaiting for witnesses to arrive. The defence testimony of Dw1 and Dw2 to the effect that the accused is weak and sickly and actually, that the accused was subdued and the complainant was stepping on his legs seems more believable.

That be as it may, this court is satisfied that the confrontation was clearly prompted by the complainant when he approached the accused's home with accusations of the pigs destroying his cassava gardens. I am also satisfied that prosecution did not establish a criminal intent against the accused. The wounds suffered by both complainant and accused do not point to a deliberate swinging with a purpose of occasioning harm. As

a matter of fact, this court cannot be sure whether it was a self-inflicted cut by the complainant in his attempt to disarm the accused of the panga.

For that reason, the defence of general denial is hereby accepted.

As such, this court is not satisfied that the prosecution proved this ingredient beyond reasonable doubts.

As this ingredient fails, it would be moot to examine the rest of the ingredients.


The accused's defence of a general denial having succeeded, this court is not satisfied that the prosecution proved all ingredients of the charge beyond reasonable doubts.

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

1. The accused is hereby found NOT GUILTY and is ACQUITTED of the offence with which he is being charged.
2. He is hereby discharged and set free, forthwith, unless being held for any other lawful cause.

I so order.

Dated at PALLISA this ____07th____ day of ____OCT____2025.



HW KYEMBE KARIM ESQ.

Magistrate G.I