



**Baariu v Director of Public Prosecutions (Criminal Appeal E004 of 2021)  
[2024] KEHC 17071 (KLR) (26 September 2024) (Judgment)**

Neutral citation: [2024] KEHC 17071 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
CRIMINAL APPEAL E004 OF 2021  
AB MWAMUYE, J  
SEPTEMBER 26, 2024**

**BETWEEN**

**LAWRENCE KIMANI BAARIU ..... APPELLANT**

**AND**

**DIRECTOR OF PUBLIC PROSECUTIONS ..... RESPONDENT**

*(Being an Appeal against the judgment of the Hon.  
E. Riany (CM) delivered on 15th December 2020)*

**JUDGMENT**

1. This is an appeal arising from the conviction, judgment and sentence of the Principal Magistrate's Court at Thika, in criminal case No. 3158 of 2017.
2. The Appellant, was the third accused. He was jointly charged with two others for the offence of robbery with violence contrary to Section 296(2) of the *Penal Code*.
3. The particulars being that on the 11<sup>th</sup> day of June 2017, at Wataalam area in Ruiru township withing Kiambu County, jointly with others while armed with dangerous weapon namely a “rungu”, robbed Samuel Njoroge Kamau of NHIF Card, voters’ card and cash Kshs.18,000/=.
4. The accused persons pleaded not guilty to the charges and the matter proceeded to full hearing.
5. Following a full trial, all three were convicted and sentenced to ten (10) years imprisonment.
6. The Appellant, being aggrieved by both the conviction and sentence, lodged this appeal seeking to quash the conviction and/or vary the sentence.
7. The memorandum of appeal raises several grounds, summarized as follows:



- i. That the Learned Trial Magistrate erred in law and fact in convicting and sentencing the Appellant when the evidence adduced was scanty and/or insufficient thereby arriving at wrong decision.
  - ii. That the Learned Trial Magistrate erred in law and fact in convicting and sentencing the Appellant when the evidence adduced was contradictory thereby arriving at wrong decision.
  - iii. That the Learned Trial Magistrate erred in law and fact in convicting and sentencing the Appellant on facts which did not support the charge thereby arriving at wrong decision.
  - iv. The Learned Trial Magistrate erred in law and fact by failing to consider the Appellant's mitigation when convicting and sentencing the Appellant thereby arriving at wrong decision.
  - v. The Learned Trial Magistrate erred in law and fact in admitting extraneous matters when convicting and sentencing the Appellant which matters were not part of evidence adduced thereby arriving at a wrong decision.
8. The Appellant denied the charges and stated he only escorted the second accused home, distancing himself from the incident. He contended that he neither assaulted nor robbed the complainant.
  9. Upon re-evaluation of the evidence as required on a first appeal: the court notes that the complainant clearly identified the Appellant as one of his assailants. The lighting conditions at the scene and his consistent narrative supported his ability to do so. His testimony was corroborated by PW2 and PW4. Additionally, the stolen items were recovered in the possession of one of the co-accused shortly after the incident. The Appellant was present during this recovery, linking him to the offence.
  10. The Trial Court correctly applied the doctrine of recent possession. The proximity in time between the robbery and the recovery of the complainant's property from the accused's house, where the Appellant had been, established a presumption of guilt. The Appellant offered no plausible explanation to rebut this presumption.
  11. The Trial Court evaluated the Appellant's defence but found it weak and inconsistent with the prosecution's evidence. This Court agrees with that assessment. His denial, unsupported by any corroboration, could not displace the cogent prosecution case.
  12. Although the *Penal Code* prescribes a more severe penalty under Section 296(2), the Trial Court exercised discretion in sentencing the Appellant to 10 years imprisonment. Considering the injuries inflicted and the degree of violence used, the sentence was neither illegal nor manifestly excessive.
  13. This Court finds that the conviction was based on consistent, credible, and corroborated evidence. The Trial Court properly applied the law and evaluated both prosecution and defence cases. No miscarriage of justice has been demonstrated.
  14. The appeal is dismissed in its entirety. The conviction and sentence imposed by the Trial Court are hereby upheld.
  15. Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 26<sup>TH</sup> OF SEPTEMBER 2024.**

.....

**BAHATI MWAMUYE**

**JUDGE.**

