



**Mbedu v Republic (Criminal Appeal E039 of 2024)
[2024] KEHC 13156 (KLR) (30 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 13156 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
CRIMINAL APPEAL E039 OF 2024
KW KIARIE, J
OCTOBER 30, 2024**

BETWEEN

ELIJAH MBEDU APPELLANT

AND

REPUBLIC RESPONDENT

(From the original conviction and sentence in Criminal Case No. E215 of 2023 of the Senior Principal Magistrate's Court at Oyugis by Hon. C.A. Okore– Principal Magistrate)

JUDGMENT

1. Elijah Mbedu, the appellant herein, was convicted after pleading guilty to the offence of robbery with violence contrary to section 296 (1) of the Penal Code.
2. The particulars were that on the 29th day of March 2023, at the Koderia South location in Rachuonyo South sub-county of Homa Bay County, they robbed Wycliffe Mboya of a mobile phone valued at KShs. 23,020.00 and immediately after the time of the said robbery, used actual violence against the said Wycliffe Mboya.
3. The appellant was convicted and sentenced to eight years imprisonment. He was aggrieved and filed this appeal.
4. The appellant was in person and raised the following grounds of appeal:
 - a. That the appellant herein pleaded guilty to the offence of Robbery with violence.
 - b. That the appellant honestly and voluntarily pleaded guilty to this offence, thus kindly asking this honourable court to consider him for a non-custodial term.
 - c. That the appellant herein is a total orphan; he lost his parents, leaving him in an isolated poverty situation, thus pleading for pardon from this hon. Court.



- d. That the appellant is sorry and remorseful for what happened and thus learnt the lesson the hard way.
 - e. That the appellant has a young family with young children who are now starving since he was the sole breadwinner.
5. The state opposed the appeal. It was contended that the sentence was appropriate.
 6. This is a first appellate court. As expected, I have analyzed and evaluated all the evidence adduced before the lower court. I have concluded, considering I neither saw nor heard any witnesses. I will be guided by the celebrated case of Okeno vs Republic [1972] EA 32.
 7. Section 296 (1) of the Penal Code provides:

Any person who commits the felony of robbery is liable to imprisonment for fourteen years.
 8. An appellate court would interfere with the trial court's sentence only where there exists, to a sufficient extent, circumstances entitling it to vary the trial court's order. These circumstances were well illustrated in the case of Nillson vs Republic [1970] E.A. 599, as follows:

The principles upon which an appellate court will act in exercising its jurisdiction to review sentences are fairly established. The court does not alter a sentence on the mere ground that if the members of the court had been trying the appellant, they might have passed a somewhat different sentence, and it will not ordinarily interfere with the discretion exercised by a trial Judge unless as was said in JAMES Vs. REX (1950), 18 EACA 147, it is evident that the Judge has acted upon some wrong principle or overlooked some material factor. To this, we would also add a third criterion, namely, that the sentence is manifestly excessive in view of the circumstances of the case. R Vs. Shershewcity (1912) C.CA 28 T.LR 364.
 9. The appellant has not provided sufficient reasons to demonstrate that the learned trial magistrate acted upon some incorrect principle or overlooked some material factor.
 10. The prescribed sentence for the offence is fourteen years; therefore, the punishment cannot be described as harsh. I have no basis for interfering with the sentence.
 11. The appeal is therefore dismissed.

DELIVERED AND SIGNED AT HOMA BAY THIS 30TH DAY OF OCTOBER 2024

KIARIE WAWERU KIARIE

JUDGE

