



REPUBLIC OF KENYA



**Gikunga v Republic (Criminal Appeal E024 of 2024)
[2024] KEHC 15907 (KLR) (18 December 2024) (Judgment)**

Neutral citation: [2024] KEHC 15907 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL E024 OF 2024
DR KAVEDZA, J
DECEMBER 18, 2024**

BETWEEN

PETER NJUGUNA GIKUNGA APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal against the original conviction and sentence delivered by
Hon. A. Mwangi (C.M) on 14th May 2024 at Kibera Chief Magistrate's
Court Criminal Case no. 1613 of 2016 Republic vs Peter Njuguna Gikunga)*

JUDGMENT

1. The appellant was charged and convicted for the offence of robbery with violence contrary to section 295 as read with section 296 (2) of the *Penal Code*, Cap 63 Laws of Kenya. After a full trial, he was sentenced to thirty (30) years imprisonment. Being aggrieved, he filed an appeal challenging his conviction and sentence.
2. In his petition of appeal, he raised grounds, which have been coalized as follows: He challenged the totality of the prosecution's evidence against which he was convicted. He averred that an identification parade was not conducted. He challenged the totality of the prosecution's evidence against which he was convicted. He complained that the defence was not considered and the sentence imposed was harsh and excessive. He urged the court to quash his conviction and set aside the sentence.
3. The appeal was canvassed by way of written submissions which have been duly considered and there is no need to rehash them.
4. This is the first appellate court and in *Okeno v. R* [1972] EA 32, the Court of Appeal for East Africa laid down what the duty of the first appellate court is. It is to analyse and re-evaluate the evidence before the trial court, and come to its own conclusions on that evidence without overlooking the conclusions of the trial court but bearing in mind that it never saw the witnesses testify.



5. The key ingredients for a robbery with violence charge are found in section 296(2) of the Penal Code. It provides as follows-

“if the offender is armed with any dangerous or offensive weapon or instrument, or is in company with one or more other person or persons, or if, at or immediately before or immediately after the time of the robbery, he wounds, beats, strikes or uses any other personal violence to any person, he shall be sentenced to death”.

6. The issues for consideration by this court are whether the appellant was positively identified and whether the prosecution did prove its case beyond reasonable doubt leading to a proper conviction and sentence.
7. The prosecution’s evidence was as follows: On the evening of 13th March 2016, Robert Gichangi Kabage (PW7) was exercising along Mbagathi Road, near Nyayo Stadium, when a group of 6-7 men accosted him. Among them, he identified the appellant, who appeared to be the group’s leader. When he resisted, they struck him with a panga, cutting his wrist. The attackers demanded Ksh. 200,000/- and instructed him to withdraw money from his bank account.
8. They took his Samsung J7 phone and used it to contact his brother, Fredrick Muriithi (PW2), demanding ransom. After negotiating, PW2 sent Ksh. 50,000/-. Once the money was transferred to the attackers’ phones, they stole PW7’s phone and SIM card. PW7, upon release, sought medical attention at the Military Hospital.
9. On 16th March 2016, PW7 received a message saying, “Pole sana bwana Kabage kwa yale tulifanya” (“Sorry for what we did”). The sender, later identified as the appellant, asked for forgiveness. The appellant also made several calls to PW7, the latest being on 3rd January 2019. PW7 agreed to forgive him but insisted the matter was before the court. The appellant refunded Ksh. 50,000/- through Sgt Richard Keitany (PW3).
10. Fredrick Muriithi (PW2) testified that he received a distress call from PW7’s phone during the incident. The assailants threatened to harm his brother unless Kshs. 200,000/- was sent. After initial negotiations, PW2 sent Ksh. 50,000/-. His brother’s phone went off immediately afterward. PW2 reported the incident to Ruai Police Station and later found his brother at the Forces Memorial Hospital with a bandaged arm. He recognised the appellant’s voice from the calls.
11. Juma Muriuki (PW1), a Miraa seller, testified that the appellant was his regular customer. On 18th March 2016, the appellant purchased Miraa worth Ksh. 2,000/- but left his Samsung J7 as collateral. On 26th March 2016, police contacted PW1 about the phone, linking it to a robbery case. PW1 explained the transaction and was subsequently taken to Pangani Police Station.
12. Sgt Richard Keitany (PW3), PW7’s bodyguard, testified that his number was used to facilitate the refund of the stolen money. He received Ksh. 54,200/- from PW1 on 19th March 2016. The appellant, while in custody, asked for forgiveness and promised to reform.
13. Sgt Faisal Juma (PW4) produced MPesa statements showing transactions during the incident. These confirmed that PW2 sent Ksh. 50,000/- to PW7’s phone on 13th March 2016. Withdrawals and transfers corroborated the timeline, with Ksh. 30,000/- sent to Peter Gikunga and Ksh. 54,200/- received by PW3.
14. Chief Inspector Godhard Mburu (PW5) investigated the case. PW7 reported being attacked near Nyayo Stadium, taken to Bunyala Cemetery, and forced to send ransom money. The investigation led to Peter Gikunga, being arrested in Majengo. A search of his residence uncovered 10 SIM cards,



including those used in the ransom transactions. The appellant confessed to selling PW7's stolen phone to PW1, leading to its recovery. Upon cross-examination, PW7 denied knowing the appellant before the incident or engaging in any business with him. The investigation revealed no prior communication between them, discrediting the appellant's defence.

15. PW9, Dr Martin Ajujo, testified that the complainant had a deep cut on his right forearm with active bleeding. The tendon and nerves were intact, and an X-ray showed no fractures. He cleaned and stitched the wound, producing the medical report and discharge summary.
16. PW6, Dr. Sangok Alex, prepared the report on 30/03/2016 (PMFI 30) and produced it as PEXH 30. During cross-examination, he confirmed that he drafted the report based on computer records.
17. PW8, Dr Joseph Maundu, examined the complainant on 31/03/2016 at 6:50 pm. He noted tenderness on the left forehead, consistent with soft tissue injuries, and a cut wound on the left forearm caused by a sharp object. The forehead injury was consistent with a blunt object. He filled the P3 form which was produced in court.
18. Following the prosecution's case, the appellant was found to have a case to answer and was put on his defence. In his defence, the appellant stated that he was a meat broker at City Market. He claimed that in 2014, a customer, allegedly a service officer at the International Peace Training Centre (IPSTC) in Karen, requested large meat supplies. They worked together until December 2015 when payment delays led to the termination of their contract. He asserted that on 13/03/2016, he received Ksh. 30,000/- and later Ksh. 200/- via M-Pesa from the complainant. He produced the M-Pesa statement as DEXH 1. He claimed he was arrested in Majengo after receiving a suspicious call and denied signing the search certificate. Under cross-examination, he admitted having no proof of business dealings with the complainant and noted no identification parade was conducted.
19. DW2, Lawrence Mutugi, a meat seller, corroborated that he and the appellant supplied meat to IPSTC. He stated the appellant discontinued the supply due to payment issues. During cross-examination, he conceded having no documentary evidence of these transactions or deliveries.
20. From the record, the prosecution presented compelling evidence to prove the charge of robbery with violence against the appellant. The complainant, PW7 (Robert Gichangi Kabage), testified that he was accosted by the appellant and a group of six to seven men while jogging around Nyayo Stadium at approximately 6:30 p.m. The visibility at the time allowed PW7 to identify the appellant as one of his assailants.
21. During the attack, the group demanded Kshs. 200,000/- from PW7. When he resisted, they assaulted him using a panga, causing a deep cut on his right wrist. PW9 (Dr. Martin Ajujo) confirmed this injury, noting that it was actively bleeding and required cleaning and stitching. He produced the medical report and discharge summary, which corroborated the use of violence during the robbery.
22. Additional corroboration came from PW2 (Fredrick Muriithi), the complainant's brother. PW2 received a ransom call from PW7's phone during the incident. The hijackers demanded money in exchange for PW7's life. PW2 recognized the appellant's voice on the call and negotiated the ransom down to Ksh. 50,000/-. He transferred Kshs. 30,000/- to Peter Gikunga, the appellant, as evidenced by PW4 (Sgt. Faisal Juma), who produced the M-Pesa transaction data.
23. The appellant's defence claimed the money was for a meat supply transaction. However, the appellant failed to provide any documentation or evidence supporting this claim. DW2 (Lawrence Mutugi), who supported the appellant's defence, also lacked proof of any business dealings with PW7. The absence of credible evidence weakened the appellant's defence.



24. PW7's identification of the appellant remained consistent during testimony and cross-examination. The timing and proximity of the attack allowed for a clear visual identification. Furthermore, PW2's recognition of the appellant's voice during the ransom call reinforced this identification. The testimonies of PW7, PW2, and PW4 were coherent and consistent, establishing the appellant's involvement in the robbery.
25. The elements required to prove robbery with violence under Section 296(2) of the Penal Code were fully satisfied. The assailants were armed with a dangerous weapon (a panga). They used violence, evidenced by PW7's wrist injury, corroborated by PW6 (Dr. Sangok Alex) and PW8 (Dr. Joseph Maundu), who confirmed the nature and extent of the injuries. Dr. Maundu's P3 form (PEXH 32) detailed the sharp-object injury on the forearm and a blunt-force injury on the forehead, consistent with PW7's account.
26. Given the credible, consistent, and corroborated evidence, the prosecution proved the charge of robbery with violence beyond reasonable doubt. The appellant's conviction is therefore justified and supported by both testimonial and documentary evidence. The conviction is accordingly affirmed.
27. On sentence, the appellant was sentenced to serve thirty (30) years imprisonment. During sentencing, the court considered the appellant's mitigation, the period spent in remand custody before sentencing him.
28. Considering the aggravating circumstances of the offence, and the fact that the appellant was armed with a panga, I hereby affirm the sentence prescribed by the trial court.
29. From the foregoing, I find that the appeal lacks merit and is dismissed in its entirety.
Orders accordingly.

JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 18TH DAY OF DECEMBER 2024

D. KAVEDZA

JUDGE

In the presence of:

Appellant Present

Mburugu for the Respondent

Achode Court Assistant

