



**Mejja v Republic (Criminal Appeal 27 of 2024)  
[2024] KEHC 16324 (KLR) (18 December 2024) (Judgment)**

Neutral citation: [2024] KEHC 16324 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
CRIMINAL APPEAL 27 OF 2024  
DR KAVEDZA, J  
DECEMBER 18, 2024**

**BETWEEN**

**MOHAMMED KARIM MEJJA ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal against the original conviction and sentence delivered by  
Hon. R. Kitagwa (SRM) on 31st August 2019 at Kibera Chief Magistrate’s  
Court Criminal Case no. E1404 of 2021 Republic vs Mohammed Karim Mejja)*

**JUDGMENT**

1. The appellant was charged and after a full trial convicted for the offence of robbery with violence contrary to section 295 as read with 296(2) of the Penal Code. The particulars were that on the 3<sup>rd</sup> day of July 2021, at Kagondo Area in Dagoretti sub-county within Nairobi County, the appellant jointly with another not before this court, while armed with a dangerous weapon namely a knife, robbed Roselita Murugi Wawira of her mobile phone make Tecno F1 valued at Kshs. 5,500, and at the time of such robbery threatened to use violence against the said lady. He was sentenced to thirty (30) years imprisonment.
2. Being aggrieved, he filed the present appeal challenging his conviction and sentence. In his petition of appeal, he averred that the prosecution failed to prove their case beyond reasonable doubt.
3. This being a first appeal, it is the duty of this court as the first appellate court, to reconsider, re-evaluate, and re-analyze the evidence afresh and come to its own conclusion on that evidence. The court should however bear in mind that it did not see witnesses testify and give due consideration for that. (See Okeno v Republic [1972] EA 32).



4. The prosecution called three (3) witnesses in support of their case. PW1, Roselita Murugi Waweru, the complainant, testified that on 3<sup>rd</sup> July 2021, at around 2:00 p.m., she was walking in the company of her sister when three men approached them and greeted them. Soon after, the appellant grabbed her from the back and told her to give him her phone, to which she refused but later conceded when one of the other men told the appellant to stab her. The men immediately took off, however, a mob managed to catch up with only the appellant while the rest managed to escape.
5. When they searched the appellant, they found a knife with a blue handle strapped to his waist. They also discovered the phone he had stolen hidden in a thicket nearby, where the appellant had thrown it in an attempt to avoid being found with it. The complainant asked him to repair the phone, but when he refused, she proceeded to report the incident at Kabete Police Station. The police arrested the appellant that same day. She further testified that the phone was valued at Kshs. 5,400 and that she had the receipts for the phone.
6. PW2, CPL Wilfred Bundi, narrated that on 3<sup>rd</sup> July, 2021, at around 4:00 pm, she was on patrol duty together with two other officers when some members of the public called to inform them of a person who they had arrested and recounted all the appellant had done. They proceeded to arrest the appellant. She further recalled that they recovered a knife from his pants, and the knife had a green handle.
7. PW3, CPL David Oluoch, the Investigating Officer, testified that on 3<sup>rd</sup> July 2021, he met the appellant at the police station and, along with the complainant and her sister, visited the crime scene. He recorded statements and received exhibits from PW2, including a knife with a blue handle, a damaged phone, and the phone's receipts, valued at Kshs. 5,500. He also stated that the appellant was not a first offender.
8. The trial court determined that the prosecution had established a prima facie case, and the appellant was placed on his defence. DW1, the appellant, testified that on 3<sup>rd</sup> July 2021, he went to Kinoo to resolve a disagreement with his girlfriend's sister, PW1. During the encounter, he slapped Brenda after she questioned PW1 about him. As he walked away, a crowd accused him of theft, arrested him, and later handed him over to the police.
9. On cross-examination, the appellant claimed he first saw the knife in court. He argued that neither Brenda nor the public witnesses testified, and disputed the colour of the knife's handle.
10. The offence of robbery with violence under section 296(2) of the Penal Code is proved when an act of stealing is committed in any of the following circumstances, that is to say, the offender was armed with a dangerous weapon or that he was in the company of one or more persons or that at immediately before or immediately after the time of the robbery the offender beats, strikes or uses other personal violence to any person (see *Dima Denge Dima & Others v Republic* NRB CA Criminal Appeal No. 300 of 2007 [2013]eKLR and *Oluoch v Republic* [1985] KLR 549)
11. The issue for determination is whether the appellant was positively identified and if the prosecution has proven its case beyond reasonable doubt. On identification, the appellant was arrested by a mob of bystanders immediately after the commission of the offense. Additionally, the appellant in his defense did not dispute the fact that he was at the scene when the people caught up with him. Therefore, the appellant was positively identified by both the complainant and PW2 who had arrested him.
12. Regarding the inconsistency in the colour of the knife that was recovered, it is important to note that police officers deal with various cases involving knives, and such an error in colour is immaterial to the case. The key point is that a knife was recovered from the appellant, which is sufficient to establish the elements of the offence. The possession of the weapon is an important factor that ties the appellant to the crime.



13. In addition to the knife, the evidence clearly shows that the appellant forcefully took a phone from the complainant. When he realised a mob was following him, he threw the phone into a nearby hedge, damaging it. This action further corroborates the charge of robbery, as it demonstrates his intent to steal and his attempt to evade arrest.
14. This Court finds the appellant's defence to be unconvincing and considers his testimony to be a mere afterthought, introduced to evade responsibility. The trial court's assessment of the evidence is supported by the facts presented. Based on the consistent and reliable testimonies of the prosecution witnesses, the Court agrees with the trial court's conclusion that the prosecution proved the case beyond a reasonable doubt. Therefore, the appellant's conviction is upheld.
15. On sentence, the appellant was sentenced to serve thirty (30) years imprisonment. Considering the aggravating circumstances of the offence, the fact that the appellant was armed with a panga and that the appellant is a repeat offender, I hereby affirm the sentence prescribed by the trial court.
16. From the foregoing, I find that the appeal lacks merit and is dismissed in its entirety.

Orders accordingly.

**JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 18<sup>TH</sup> DAY OF DECEMBER 2024**

**D. KAVEDZA**

**JUDGE**

In the presence of:

Appellant Present

Mburugu for the Respondent

Achode Court Assistant

