



REPUBLIC OF KENYA



KENYA LAW
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**Mutua v Republic (Criminal Revision E267 of 2021)
[2022] KEHC 11672 (KLR) (31 May 2022) (Ruling)**

Neutral citation: [2022] KEHC 11672 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL REVISION E267 OF 2021
RB NGETICH, J
MAY 31, 2022**

BETWEEN

RAPHAEL MULI MUTUA APPLICANT

AND

REPUBLIC RESPONDENT

(Revision of the original conviction and sentence in Criminal Case No 286 of 2018 at the Chief Magistrate's Court at Kiambu, Hon G Omodho PM, dated July 29, 2021)

RULING

1. Raphael Muli Mutua was convicted on a charge of Preparing to Commit a Felony Contrary to section 308 (1) of the *Penal Code*. Particulars are that, on the night of February 13, 2018 at around 12.30 a m at Kiwanja Market within Kasarani sub-county within Nairobi county, the accused was found armed with a dangerous weapon namely a kitchen knife and breaking metal bar in circumstances that indicated he was with an intent to commit a felony namely breaking.
2. On February 14, 2018 the accused pleaded not guilty to the charge. After trial, the accused was convicted and sentenced to serve 3 years imprisonment.
3. In his judgment the magistrate convicted the accused for lack of any defence against evidence adduced by the Prosecution
4. I have perused and considered evidence adduced and note that the trial Magistrate stated as follows:-

“...in my assessment much as no overt act was proved to show that an offence was about to be committed but lack of accountability of the kitchen knife and metal bar in a market place at midnight were indicative of preparation to commit an offence.”



5. The prosecution's evidence is that Corporal Kinyua and APC Kamau met the accused looking suspicious and upon being searched, he was found in possession of a kitchen knife and a metal bar which were produced as exhibits 1 and 2 respectively. He was arrested and charged after failing to account for the possession of the weapons. On being put on his defence, the accused chose to remain silent.
6. There is no doubt that the accused was found with crude weapons being knife and metal bar at night. He never explained the purpose of being at the market at that hour of the night with the weapon which could be used to commit a felony. The prosecution identified the likely offence as breaking. The offence is alleged to have been committed at 3.00 a.m. Whereas I do agree that possession of the weapons in itself constitutes an offence, the hour he was found in the market place and his failure to account for being with the weapons at the time of the night, give reasonable ground for suspicion of intention to commit a felony.
7. From the foregoing, I see no merit in the application for revision and dismiss accordingly.
8. Final Orders
 - 1) Application for revision is hereby dismissed.
 - 2) Accused to complete sentence imposed by the trial court.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KIAMBU THIS 31ST DAY OF MAY, 2022

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RACHEL NGETICH

JUDGE

In the presence of:

Kinyua - Court clerk

Gacharia for state

Accused – Absent

