



**Mwirigi v Republic (Criminal Appeal E123 of 2023)
[2025] KEHC 1771 (KLR) (14 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 1771 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL APPEAL E123 OF 2023
CJ KENDAGOR, J
FEBRUARY 14, 2025**

BETWEEN

JEREMIAH MWIRIGI APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal against the conviction and sentence in Judgment delivered on 26th July, 2023 by Hon. E. Ongira SRM in Tigania Law Courts Criminal case No. 870 of 2022)

JUDGMENT

1. The Appellant was charged in the Principal Magistrates' Court at Tigania under Criminal Case No. E870 of 2022 with the offence of robbery with violence, contrary to Section 295 as read with Section 296(2) of the *Penal Code*. The particulars are that on 4th October, 2022, at around 19:30 hours in Mashikani Village, Nkomo Location, within Tigania West Sub-County of Meru County, the Appellant robbed Jarred Mosei of his mobile phone, an ITEL P33 in black colour, and immediately before the robbery, used actual violence against Jarred, assaulting him with a panga, thereby occasioning him actual bodily harm.
2. The matter proceeded to trial, and the trial Court found the Appellant guilty and sentenced him to 20 years' imprisonment. Aggrieved by the decision, the Appellant lodged the instant appeal seeking to have both the conviction and sentence quashed.
3. The petition of appeal advanced the following grounds of appeal:
 1. That the learned trial magistrate erred in both matters of law and facts by failing to note that there was a need for an identification parade to be conducted to prove beyond reasonable doubt that the culprit is the appellant herein.



2. That, the learned trial magistrate erred in both matters of law and facts by failing to note that the light used to identify the appellant was not fully analyzed.
 3. That the learned trial magistrate erred in both matters of law and facts by failing to note that the appellant was not found with the exhibit.
 4. That the learned trial magistrate erred in matters of law and fact by failing to consider the appellant's defence.
4. The appeal was canvassed through written submissions. The Appellant argues that the prosecution did not meet the standard of proof beyond a reasonable doubt and that the trial Court did not consider his defence. He focused primarily on the issue of identification. He criticised the prosecution's investigations, asking the Court to conclude that the circumstances surrounding the scene were not conducive to the type of recognition or identification that the trial Court relied upon in convicting him.
 5. During the trial, the complainant, a student at Meru University, testified as PW3. He explained to the Court that he was on his way home at around 7.30 p.m when a motorcycle approached from behind and slowed down. The Appellant, who was a passenger on the motorcycle, snatched the Complainant's phone. The Complainant stated that he grabbed the back of the Appellant's shirt, and in response, the Appellant pulled out a panga and threatened to cut him. He testified that during the struggle, he managed to seize the panga, resulting in a cut to his left hand. He recounted that during their struggle, the Appellant fell off the motorcycle, the rider fled the scene, and other pedestrians helped him apprehend the Appellant and took him to the police station.
 6. The investigating officer stated that the Appellant was brought to the station at approximately 10:30 p.m., escorted by members of the public. He testified that the Complainant had the phone that the Appellant had snatched and displayed visible injuries on his left hand. The officer mentioned that members of the public were able to recover the phone from the Appellant, who was then apprehended by them.
 7. PW2, a clinician, testified regarding the Complainant's medical examination, which she classified as harm in terms of the degree of injury. His testimony stated that the Complainant was treated on the same date the injury was purported to have been sustained.
 8. PW4 testified that he was on his way home from work when he saw the Complainant walking ahead of him and noticed a motorcycle with two people on it. Shortly thereafter, he heard screams, and when he moved closer, he saw the Complainant and the Appellant struggling on the ground. He stated that he took a panga from the Appellant and assisted in apprehending him, after which they took the Appellant to the police station.
 9. The Appellant, in his defence, acknowledged that he was present at the scene at the specified time. He confirmed that he was a pillion passenger and denied the charge against him. According to the Appellant, the rider of the vehicle knocked down the Complainant, who was a pedestrian, and then fled the scene, leaving him behind. He stated that the Complainant demanded to know the identity of the rider, and when the Appellant claimed he did not know who it was, he was arrested. He stated that this is how he was escorted to the police station and subsequently charged.

Analysis and determination

10. As an appellate Court, I must reconsider and evaluate the evidence before the trial Court and arrive at an independent conclusion, bearing in mind that I did not hear or see the witnesses. I am guided by



the decisions in *Njoroge v Republic* [1987] KLR, 19 & *Okeno v Republic* [1972] E.A, 32 And *Kiilu & another v Republic* [2005]1 KLR 174.

11. I have considered and analyzed the evidence tendered during the trial by both the Appellant and the prosecution, the grounds of appeal, and the written submissions presented herein. The issues for determination are three pronged;
 - i. Whether the prosecution proved their case to the required threshold;
 - ii. Whether the trial court considered the appellant's defence;
 - iii. Whether the sentence is appropriate.
12. The elements of the offence of robbery with violence were set out by the Court of Appeal in the case of *Oluoch v Republic* [1985] KLR thus:

“Robbery with violence is committed in any of the following circumstances:

 - a. The offender is armed with any dangerous and offensive weapon or instrument; or
 - b. The offender is in company with one or more person or persons; or
 - c. at or immediately before or immediately after the time of the robbery the offender wounds, beats, strikes or uses other personal violence to any person
 13. It is undisputed that the Complainant and the Appellant had an encounter on the night in question. The Complainant asserts that he was robbed, while the Appellant claims that the scuffle resulted from an accident after the rider knocked the Complainant. The investigating officer stated that the Appellant was escorted to the police the same night and the exhibits surrendered on the same night to wit the mobile phone and the panga.
 14. PW4 testified that he disarmed the Appellant, who had the panga, and observed that the Complainant had sustained a cut on his left hand. The defence of an accident was presented as an afterthought, as it was never mentioned to the witnesses. The investigating officer stated that he visited the scene, and the Complainant's account of the phone snatching and the struggle is credible. He was assisted by members of the public in apprehending the appellant.
 15. It is also hard to believe the defence tendered that it was an accident, especially since members of the public escorted the appellant after detaining him, and the report made a few hours later stated that he had stolen the phone from the Appellant when he was presented at the station. The injuries sustained by the Complainant corroborate his account of events, which involved a struggle after he seized the appellant by the shirt, resulting in his falling down and the ensuing confrontation with the panga that the Appellant wielded.
 16. Even if the rider took off, the evidence indicated that he turned back after the Appellant fell, intending to rescue him by heading towards the Complainant with the motorcycle. This suggests that they shared a joint intention. I concur with the trial Court's findings that the Appellant was unable to escape after robbing the Complainant.
 17. The Appellant, accompanied by the motorcyclist, forcibly robbed the Complainant of his phone during the incident. The Appellant had the clear intention to permanently deprive the Complainant



of their device and would have succeeded if he had not been apprehended by members of the public shortly thereafter. He was wielding a panga and caused injury to the Complainant during the robbery.

18. The ingredients of the offence of robbery with violence were proven to the required standard.
19. I have examined the Appellant's sentence. The Appellant was convicted of robbery with violence contrary to Sections 295 and 296 (2) of the *Penal Code*, which carries a potential death sentence. The trial Court duly considered that the Appellant was a first offender and imposed a prison term that aligned with the principles of justice regarding retribution and deterrence.
20. I uphold the conviction and sentence. The appeal lacks merit and is dismissed.

It is so ordered.

**DATE, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS
ONLINE PLATFORM ON THIS 14TH DAY OF FEBRUARY, 2025**

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C.KENDAGOR

JUDGE

In the presence of:

Court Assistant: Beryl

Appellant: Present

Mr. Omondi, ODPP for Respondent

