Nyokabi v Republic (Criminal Appeal E003 of 2020)
[2025] KEHC 2866 (KLR) (Crim) (13 February 2025) (Judgment)

Neutral citation: [2025] KEHC 2866 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

CRIMINAL

CRIMINAL APPEAL E003 OF 2020

AB MWAMUYE, J

FEBRUARY 13, 2025

BETWEEN

MOSES NJOROGE NYOKABI .... APPELLANT

AND

REPUBLIC .... RESPONDENT

(Being an Appeal against the Judgment, Conviction and Sentence of the Hon. H. Onkwani (SRM) delivered on 13th March,2020 in Criminal Case No.827 of 2017)

JUDGMENT

1. The Appellant, Moses Njoroge Nyokabi, was charged with the offence of Robbery with Violence Contrary to section 296(2) of the *Penal Code*. The particulars of the offence as stated on the Charge Sheet were that on the 1st May, 2017 along city hall way, within Nairobi City County, the Appellant robbed Dominic Mbijiwe a mobile phone make VIWA/SNo. W308xxxxxxxx valued at Kes. 8,000/- and at or immediately before or after the time of such robbery wounded one Francis Mutuku.

2. The Appellant pleaded not guilty. The prosecution called 5 witnesses; the Appellant was put to his defence. The Appellant gave a sworn testimony. The Appellant was subsequently convicted and sentenced to serve 20 years imprisonment.

3. Having set out the background to the matter, this Court's duty is to evaluate and scrutinize the evidence and proceedings on record and reach its own independent conclusion as espoused in *David Njuguna Wairimu v Republic* [2010] where the court of appeal held: -

> "The duty of the first appellate court is to analyze and re-evaluate the evidence which was before the trial court and itself come to its own conclusions on that evidence without overlooking the conclusions of the trial court. There are instances where the first appellant

court may, depending on the facts and circumstances of the case, come to the same conclusions as those of the lower court. It may rehash those conclusions. We do not think there is anything objectionable in doing so, provided it is clear that the court has considered the evidence on the basis of the law and the evidence to satisfy itself on the correctness of the decisions.

4. I have considered the Trial Court's proceedings, the Petition of Appeal, the Appellant's submissions and the Respondent's submissions and I identify issues for determination as follows: -

   a. Whether the elements of the offence of robbery with violence were proven beyond reasonable doubt as required in law;

   b. Whether the sentence was harsh and excessive under the circumstances.

Whether the Elements of the Offence of Robbery with Violence were Proved Beyond Reasonable Doubt as Required in Law

5. In analyzing the ingredients of the offence of robbery with violence, it is important to start with the text of the law. The Appellant was convicted of the offence of robbery with violence. Section 296 (2) of the *Penal Code* provides that:-

> "If the offender is armed with any dangerous or offensive weapon or instrument, or is in the 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. Under this section, therefore, the Prosecution is required to prove one of the following in order to successfully establish the offence charged:

   i. That the offender was armed with any dangerous or offensive weapon or instrument; or

   ii. That he was in the company with one or more other person or person; or

   iii. That at or immediately before or immediately after the time of the robbery, he wounded, beat, struck or used any other violence to any person.

7. In the present case, PW1 stated that he was in the company of PW2 when the appellant and 2 others came and snatched the phone from PW2 and then hit PW1 and he fell down. He was injured on the left hand. He further stated that the hand got dislocated and he can't use the hand properly.

8. PW2 testified that he saw the person that took his phone. The Trial Court found the Complainant's evidence to be truthful. This in itself would be sufficient to prove robbery with violence since our case law is now clear that the Prosecution need only prove one of the ingredients. However, here, the Prosecution also proved the use of personal violence on the Complainant. Again, PW1 testified that he suffered injury and was treated at Kitengela Hospital. The Appellant was one of the three people who attacked him.

9. In *Dima Denge Dima & Others v Republic*, Criminal Appeal No. 300 of 2007 the Court stated stressed this point when it stated as follows:

> "...The elements of the offence under Section 296 (2) are three in number and they are to be read not conjunctively, but disjunctively. One element is sufficient to found an offence of robbery with violence."

10. On the ingredients of the offence, I am satisfied that the Appellant was in the company of two other people when they attacked and robbed PW1 & PW2. All the elements of the offence are present. There were more than one person and they used physical violence on PW1 & PW2. It is therefore not true that the ingredients of the offence were not proved beyond reasonable doubt. In my own analysis and consideration, the offence of robbery with violence has been proven beyond reasonable doubt.

Whether the Sentence was Harsh and Excessive under the Circumstances

11. In *Nelson Ambani Mbakaya v Republic* (2016) eKLR, the Court of Appeal stated that:-

> "Sentencing of an accused person after conviction involves the exercise of discretion by the trial court. That discretion must of course be exercised judiciously rather than capriciously, depending on the circumstances of each case. As what is challenged in this appeal is essentially the exercise of discretion by the trial court, this Court is normally slow to interfere with that exercise of discretion unless it is demonstrated that the trial court acted on the wrong principle; ignored material factors; took into account irrelevant considerations; or on the whole that the sentence is manifestly excessive........"

12. Similarly, in *Mkirani v Republic* (Criminal Appeal E010 of 2021) [2021] KEHC 377 (KLR) (17 December 2021) (Judgment), Mativo J. (as he then was) stated:-

> "Regarding the sentence, sentencing is the discretion of the trial court but such discretion must be exercised judiciously and not capriciously. The trial court must be guided by the evidence and sound legal principles. It must take into account all relevant factors and eschew all extraneous or irrelevant factors. Certainly, the appellate court would be entitled to interfere with the sentence imposed by the trial court if it is demonstrated that the sentence imposed is not legal or is so harsh and excessive as to amount to miscarriage of justice, and or that the court acted upon wrong principle or if the court exercised its discretion capriciously....."

13. I have considered the issue of harsh sentence. The penalty under section 296(2) of the *Penal Code* is death. The Appellant was sentenced to 20 years imprisonment for the offence of robbery with violence. I have no reason to disturb that sentence.

14. From the foregoing analysis, I am satisfied that the appellant was convicted on strong evidence and the prosecution discharged the burden of proof beyond reasonable doubt. I therefore find no merit in the appeal. In the result, I affirm the judgement of the court below and dismiss the appeal in its entirety.

DATED, SIGNED, AND DELIVERED VIRTUALLY THIS 13TH DAY OF FEBRUARY, 2025.

BAHATI MWAMUYE

JUDGE