



REPUBLIC OF KENYA



KENYA LAW
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**Orina v Republic (Criminal Appeal E054 of 2024)
[2025] KEHC 1613 (KLR) (25 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 1613 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL E054 OF 2024
DR KAVEDZA, J
FEBRUARY 25, 2025**

BETWEEN

PETER OMARI ORINA ALIAS PANGAMAN APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal against the original conviction and sentence delivered by
Hon. Murage (P.M) on 27th May 2024 at Kibera Chief Magistrate's Court
Criminal Case no. E771 of 2023 Republic vs Peter Omari Orina alias Pangaman)*

JUDGMENT

1. The appellant was charged with three counts of robbery with violence contrary to section 296 (2) of the *Penal Code*, Cap 63 Laws of Kenya. After a full trial, he was convicted on the second count and sentenced to serve twenty (20) years imprisonment. Being aggrieved, he filed an appeal challenging his conviction and sentence.
2. In his petition of appeal dated 5th July 2024, he raised grounds which have been coalized as follows: He challenged the totality of the prosecution's evidence against which he was convicted. He contended that his defence was not considered by the trial court. He argued that the sentence imposed was harsh and manifestly excessive. He urged the court to quash his conviction and set aside the sentence.
3. 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”.



4. 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.
5. This being a first appeal, it is the duty of this court as the first appellate court, to reconsider, re-evaluate, and re-analyse 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).
6. The prosecution called five (5) witnesses in support of their case. PW1, Phylister Jelimo, testified that on 3 March 2023, at approximately 2:00 pm, an individual wielding a panga confronted her in shared washrooms, demanding silence. She screamed, causing the assailant to flee, and identified the appellant during an identification parade at Langata Police Station, noting distinctive cheek marks. She reported a stolen phone, valued between Kshs 18,000 and Kshs 20,000, to Kibra Police Post. Local residents recognised the fleeing suspect as a habitual thief and recovered a tampered pink gas cylinder.
7. PW2, Ann Wanjiru, reported a phone theft from her Highrise home on 24 April 2023 at 4:00 pm. She identified the appellant, whom she had seen previously, though he had dreadlocks at the time of the offence but later shaved. She declined to pursue the case further. PW3, Paul, a medical practitioner, recounted that on 3 March 2023, at around 3:00 pm, he encountered the appellant carrying a leaking gas cylinder and panga at Kenyatta Hospital staff quarters. He pursued the appellant and later reported the incident, producing a receipt for a 13kg gas cylinder and regulator costing Ksh 1,000.
8. PW4, Chief Inspector Daniel Opiyo, investigated reports of housebreaking and theft logged at High Rise Police Station on 7 March 2023. An identification parade on 17 May 2023 resulted in the appellant's identification by multiple witnesses. Items recovered included a phone, laptop, and panga. PW4 produced exhibits, including the parade form and occurrence book entry. PW5, Vicky Ndunge, reported a missing gas cylinder and phone on 6 April 2023, valued at Ksh 5,000. A man with dreadlocks was seen with the cylinder, later identified as the appellant via a WhatsApp group photo and parade.
9. The evidence hinges on witness identification, with consistent descriptions of the appellant's use of a panga and physical traits, despite variations in prior familiarity. Cross-examination revealed no discrepancies sufficient to discredit the identifications, though the appellant's counsel noted other individuals with dreadlocks in the parade. The prosecution alleges a pattern of armed entry and theft, supported by recovered items and witness testimonies.
10. In his defence, the appellant denied the offences, asserting he was a plumber. He claimed that on 12 May 2023, while heading to Racecourse, he was detained by individuals demanding money for release. Lacking funds, he was taken to a police station, subjected to an identification parade, and subsequently brought to court. He insisted he was uninvolved in the crimes. On cross-examination, he denied possessing a panga, confirmed shaving his long hair before the arrest, and noted a photo taken by CI Opiyo in custody was not produced in court. He acknowledged signing the identification parade form.
11. The trial court considered his defence and found him guilty on one count. The appeal was canvassed by way of written submissions which have been duly considered.
12. 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)

13. From the material before court, PW1, Phylister Jelimo, testified that on 3 March 2023, an assailant armed with a panga confronted her in a washroom, demanding silence, and stole her phone. PW3, Paul, saw the appellant on the same date carrying a panga and a gas cylinder, suggesting a threat of violence during the theft. PW4, CI Daniel Opiyo, confirmed reports of housebreaking and theft involving a "pangaman," with the appellant arrested possessing a panga. Witnesses identified him in a parade. The use of a panga, a deadly weapon, and direct threats align with robbery with violence, beyond mere theft.
14. I find the appellant was positively identified, with reliable prosecution evidence of visual identification. The assailant wielded a panga, threatening harm to victims, including PW3. This satisfies the element of force in a robbery with violence. PW1 recounted direct threat, and PW3 observed the appellant armed with a panga during the incident, an indication of intimidation. The prosecution's consistent testimonies affirm the use of violence or threats. The appellant's defence, denial of the offences as mere fabrication was considered by the trial court but deemed unconvincing. His claim that his defence was ignored lacks merit as the record shows it was evaluated and rejected. Accordingly, his conviction for robbery with violence was sound, and the appeal against his conviction fails.
15. On sentence, the appellant was sentenced to serve 20 years imprisonment. During sentencing, the court considered the appellant's mitigation and the pre-sentence report before sentencing him.
16. 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.
17. From the foregoing, I find that the appeal lacks merit and is dismissed in its entirety.
Orders accordingly.

JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 25TH DAY OF FEBRUARY 2025

D. KAVEDZA

JUDGE

In the presence of:

Mr. Mutuma for the respondent

Appellant – present

Achode – court Assistant

