



REPUBLIC OF KENYA



**Koskey v Republic (Criminal Appeal E033 of 2024)
[2025] KEHC 2956 (KLR) (13 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 2956 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL APPEAL E033 OF 2024
JM NANG'EA, J
MARCH 13, 2025**

BETWEEN

DENNIS KIPTANUI KOSKEY APPELLANT

AND

REPUBLIC RESPONDENT

JUDGMENT

1. This Appeal is against the Appellant's conviction and sentence in the lower court for violent Robbery Contrary to Section 296 (2) of the [Penal Code](#). He was charged that on 9th March 2022 at Salгаа Trading Centre, Rongai Sub County, within Nakuru County he with others not before court while armed with knives robbed Salim Mohamed Asuman ("the complainant") of a motorcycle registration number KMFE 063 K Make Boxer valued at Kshs. 118,000/= , and during the robbery used personal violence against the complainant.
2. The Appellant denied the offence. After full hearing of the case , he was convicted by judgment delivered on 27th July 2023 and sentenced to life imprisonment.
3. The Appellant's Grounds of Appeal are;-
 1. That the learned trial magistrate erred in law and in fact by failing to note that all the three witnesses who testified before the court were not credible at all.
 2. That the learned trial magistrate erred in law and in fact by failing to note that the prosecution did not prove their case to the required standard.
 3. That the learned trial magistrate erred in law and in fact when he put more reliance of the evidence of the arrest of his case which was not proved at all according to the required standards (sic).



4. That the learned trial magistrate erred in law and in fact by failing to note that the investigation of the case was poorly done according to trial record.
 5. That the learned trial magistrate erred in law and in fact by relying on the evidence adduced by the witnesses which was very contradicted according to the trial record (sic).
 6. That the learned trial magistrate erred in law and in fact by rejecting his defence without a cogent reason.
 7. That the learned trial magistrate erred in law and in fact by putting more reliance on the identification mark of the said exhibit in which the mark was not enough to proof that the PW2 was the legitimate owner of the same according to the trial procedure (sic).
4. The Grounds of Appeal may be condensed into two broad grounds to wit;
- That the conviction was against the weight of evidence tendered and that the defence put forth was not properly considered.
5. It is noted that the Appellant filed amended Grounds of Appeal on 22/1/2025 but upon perusal thereof, the same Grounds set out by the court hereinabove are to be considered.
 6. The evidence adduced before the trial court in summary is that the complainant transported a man and a woman on his motorcycle from Rongai to Salgaa as instructed. After stopping at the destination, some men suddenly appeared armed with knives and attacked him in concert with his male customer. The female customer grabbed him as the other attackers took control of the motorcycle. The assailants left with the motorcycle. The complainant said he did not recognize them but saw their physical appearance well. The scene of the attack was dark and deserted.
 7. The complainant made a report to the police, and in July 2022 he was called to Rongai Police Station and shown a motorcycle which he said resembled his. Most parts of the motorcycle including the engine had been changed. The complainant, however, noted that the frame matched that of his stolen motorcycle. The colour had been changed from black to red. The chassis number matched the one indicated in his log book he tendered in evidence.
 8. The police later asked the complainant to go to their station and produced an arrested suspect before him. He identified him from the face as the male customer he transported on the material date and is the Appellant herein. He was putting on the same clothes. He had seen him well at a petrol station in Rongai where he had picked him up. There was lighting at the petrol station according to the complainant. As a security measure, the complaint further stated that he had pretended to use the suspect's mobile phone and dialed his own mobile phone number several times so he could take note of the customer's phone number. The number was 0751 933 098 which he gave to the police.
 9. PW3 (investigating Officer) confirmed that the complaint was lodged at Rongai Police Station. The complainant gave them the suspect's cell phone number which they used to track him down to Salgaa area where he was found with the stolen motorcycle whose color had been changed. The registration number had also been changed from KMFE 068 K to KMDU 894Z.
 10. The Appellant gave sworn evidence upon being put on his defence. Telling the court that he is a mechanic by occupation, he stated that he bought the motorcycle in question and had named the seller in his statement he recorded with the police. The accused further claimed to have shared with the police the telephone number of the person who sold the motorcycle to him and he was ready to lead the police to him. The police are, however, said to have refused to arrest the person.



11. Under cross-examination, the Appellant named the motorcycle seller as one Josphat Lang'at, a resident of Kericho. He supposedly bought the motorcycle in January 2021 for Kshs. 40,000/=. He did not have the sale agreement and did not know the motorcycle is registration number. He had used the motorcycle for 6 months before he was arrested.
12. In convicting the appellant, the trial court held that the motorcycle found in his possession was the same one stolen from the complainant since the chassis number matched the one reflected on the motorcycle's log book. The learned trial magistrate further noted that the motorcycle generally resembled the one stolen from the complainant as per the evidence. In the circumstances, the Honourable Magistrate observed that the burden of proof shifted to the Appellant to explain how he came into possession of the motorcycle.
13. Having considered the Appellant's defence, the trial court doubted the same for reasons that the Appellant failed to produce the sale agreement he alluded to; he claims to have bought the motorcycle in January 2021 yet the same had not been stolen at the time; he claims to have used the motorcycle for 6 months before his arrest that occurred on 4th July 2022 which is a practical impossibility in the circumstances; that the appellant was credibly identified with the aid of lighting from a petrol station and finally that the police tracked him down using his cell phone number the complainant gave them.
14. The learned trial magistrate was satisfied in the circumstances that the appellant was the culprit and accordingly convicted him.
15. As a first appellate court, I have the duty of reviewing the evidence presented before the lower court and make own independent conclusion on both issues of fact and law while bearing in mind that I did not watch the demeanour of witnesses (see the Case of Okeno vs Republic (1972) EA 32 and Pandya vs Republic (1957) EA 336).
16. The Complainant did not know the appellant before the incident. He, however, maintained that he saw him well and identified him at the Police Station about 4 months later. This may be a long period to enable to complainant to identify him as the attacker. Perhaps a police identification parade could have been conducted to further test the complainant's evidence.
17. The above observations notwithstanding, the Appellant has not disputed ownership of the mobile phone number the police alleged to have used to apprehend him. He has not also explained why he did not produce the sale agreement, existence of which he did not dispute, by which he purportedly purchased the motorcycle in question. The court is further satisfied that the motorcycle belonged to the complainant and was the one he was robbed of as found by the trial court. His defence that he bought the motorcycle from a third party is not credible and appears to be an afterthought seeing that the record does not indicate he put the contention to the prosecution witnesses while exercising his right of cross-examination.
18. The grounds of appeal fail and I find that the Appellant was lawfully convicted. Based on the grounds of appeal, he does not seem to challenge the sentence meted out against him.
19. The appeal is accordingly dismissed.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 13TH DAY OF MARCH, 2025.

J. M. NANG'EA , JUDGE.

In the presence of:

Ms Sang for the DPP



Appellant, present

Court Assistant (Jeniffer)

J. M. NANG'EA, JUDGE.

