



REPUBLIC OF KENYA



KENYA LAW
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**Mayoma v Republic (Criminal Appeal 47 of 2023)
[2025] KEHC 3656 (KLR) (24 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 3656 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL 47 OF 2023
DR KAVEDZA, J
MARCH 24, 2025**

BETWEEN

RAPHAEL MAYOMA APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal against the original conviction and sentence delivered
by Hon. Boke (SPM) on 13th December 2019 at Kibera Chief Magistrate's
Court Criminal Case No. 3486 of 2017 Republic vs Raphael Mayoma)*

JUDGMENT

1. The appellant was charged and after a full trial convicted for the offence of robbery with violence contrary to section 296(2) of the Penal Code. He was convicted to serve thirty-five (35) years imprisonment less two (2) years spent in remand custody.
2. Being aggrieved, he filed an appeal, challenging his conviction and sentence. The petition of appeal challenged the totality of the prosecution's evidence against which he was convicted. He argued that the trial court failed to consider his defence. In addition, he contended that the sentence imposed was harsh and excessive.
3. 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).
4. The appeal was canvassed by way of written submissions which have been duly considered and there is no need to rehash them.



5. 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”.

6. It was the prosecution’s case that The prosecution’s case is that on 22nd October 2017, at approximately 2:30 PM, the complainant (PW1) was herding cattle near Wilson Airport, accompanied by PW2, Daniel Seretu, and another individual. The appellant, in the company of an accomplice, approached under the guise of merely passing by. At the time, PW1 was engaged in a phone conversation, standing at a short distance from PW2. The appellant seized PW1’s phone from his ear, while the accomplice removed PW1’s jacket from his shoulders. When PW1 turned to confront his assailants, the appellant struck him on the face, inflicting a laceration on his right eyebrow, which bled. The appellant then attempted to handcuff PW1, but upon noticing the appellant’s dreadlocks, PW1 became suspicious that he was not a police officer.
7. The appellant’s accomplice fled, and the appellant followed. PW1 and PW2 raised an alarm, attracting members of the public who joined in the pursuit towards Kibera Slum. The mob apprehended the appellant, while his accomplice escaped. The appellant was subjected to mob justice, during which the handcuffs in his possession were recovered in the presence of PW1 and PW2.
8. Police officers, including PW3, PC Francis Ogembo from Langata Police Station, arrived at the scene and rescued the appellant who was being beaten by a mob. The handcuffs were handed over to the police, but PW3 could not ascertain the identity of the person who surrendered them. Upon examination, the handcuffs were found to be counterfeit. The appellant was subsequently taken to Langata Police Station, booked in, and provided with medical treatment for injuries sustained during the mob assault.
9. PW1 also received medical treatment and a P3 form was completed, which was later produced in court by PW5, Dr. Kamau. The report confirmed that PW1 sustained injuries to his right eyebrow, leaving a visible scar. PW4, CPL David Langat from Langata Police Station, was assigned to investigate the matter. Following witness statements, the appellant was formally charged. The stolen phone and KES 700 from PW1’s jacket were not recovered; however, the jacket was later found abandoned at the scene, having been stripped of its contents.
10. In his unsworn defence, the appellant claimed that he was returning home after seeking casual employment when he heard cries for help. He then observed a group of people running before he was struck from behind with a rungu on his forehead, above his right eye. He alleged that he lost consciousness and later regained it at Kenyatta National Hospital (KNH), where he was informed by medical staff that police officers had brought him in for treatment. He was later taken to the police station, where his fingerprints were recorded. Upon inquiry, he was informed that he was facing a robbery charge.
11. On analysis of the evidence, PW1 and PW2, provided consistent and credible testimony regarding the robbery. They stated that the appellant and an accomplice accosted them, snatching PW1’s phone while the accomplice took his jacket. During the struggle, the appellant and his accomplice fled, prompting a pursuit by PW1, PW2, and members of the public. The appellant was apprehended by a mob, which attempted to lynch him by setting him on fire. His identification as one of the perpetrators was unequivocal, as he was arrested at the scene.



12. During the robbery, the appellant struck PW1 on the face, inflicting a bleeding laceration on his eyebrow, and attempted to restrain him using handcuffs. The evidence established that the complainant was not only robbed but also subjected to physical violence. The appellant's identification was beyond doubt, as he was arrested at the scene while in possession of counterfeit handcuffs.
13. The appellant denied involvement, claiming mistaken identity and asserting that he was at the wrong place at the wrong time. However, his defence was unsupported by any credible evidence and was inconsistent with the clear, reliable, and unchallenged testimony of the prosecution witnesses. The prosecution's case was cogent, establishing beyond reasonable doubt that the appellant participated in the robbery with violence. The trial court rightly found that the appellant used force to deprive PW1 of his property, and his defence was properly rejected. The conviction for the offence of robbery with violence was therefore justified and is affirmed.
14. On sentence, the appellant was sentenced to thirty-three years imprisonment. Section 329 of the Criminal Procedure Code, gives judges and magistrates, in appropriate cases to consider mitigation and mete out a sentence that fits the offence committed despite another sentence being provided for under the Act in which the offence is prescribed. In that regard, I find the sentence imposed shatters all hopes of the appellant for rehabilitation or having another chance to start afresh.
15. Therefore, the appeal on the sentence succeeds. The sentence of thirty-five years imprisonment is hereby substituted with a sentence of twenty (20) years imprisonment to run from October 22, 2017 the date of his arrest pursuant to section 333(2) of the Criminal Procedure Code.

Orders accordingly.

JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 24TH DAY OF MARCH 2025.

D. KAVEDZA

JUDGE

In the presence of:

Appellant absent

Mutuma for the Respondent

Tonny Court Assistant

