



REPUBLIC OF KENYA



**Makhanu v Republic (Criminal Appeal E080 of 2024)
[2025] KEHC 2432 (KLR) (11 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 2432 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL E080 OF 2024
DR KAVEDZA, J
MARCH 11, 2025**

BETWEEN

ELIZABETH NAFULA MAKHANU APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal against the original conviction and sentence delivered by
Hon. M Maroro (SPM) on 22nd November 2023 at Kibera Chief Magistrate's
Court Criminal Case no. 1073 of 2022 Republic vs Elizabeth Nafula Makhanu)*

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*. The particulars were that on 24th June 2022 at Kirima Shopping Center Parklands in Westlands Sub-county within Nairobi County the appellant jointly with another not before the court while armed with a knife, robbed one Anisa Ahmed Hussein of Kshs. 36,000 and USD 100 and, immediately before the time of such robbery used actual violence against the complainant. She was sentenced to serve twenty (20) years imprisonment.
2. Being aggrieved, she filed the present appeal challenging her conviction and sentence. In her petition of appeal, the appellant challenged the totality of the prosecution's evidence against which she was convicted. She urged the court to quash her conviction and set aside the sentence imposed.
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 prosecution called seven (7) witnesses in support of their case. On June 24, 2022, PW1, Anisa Ahmed Hussein, was attacked in her home by her former cleaner, the appellant, and an accomplice.



The appellant, who had previously provided cleaning services, arrived with another woman, claiming she was her sister and that they would clean faster together. While the alleged sister began ironing, PW1 stepped into her child's bedroom.

5. Upon returning to her room, she found her clothes scattered on the floor. Suddenly, the appellant attacked her from behind, strangling her with a piece of cloth. When PW1 bit her assailant in self-defense, the appellant's accomplice held her down and covered her face with a pillow. She managed to escape briefly and hid under her bed, but the appellant retrieved a knife and demanded her M-Pesa PIN. PW1 insisted she had no money, but the attackers stole Kshs. 36,000 and USD 100 from her handbag before fleeing upon hearing that neighbours were returning from the mosque.
6. Following the attack, PW1 sought medical attention at Jalaram Medical Centre and reported the crime at Parklands Police Station, where she recorded a statement and received a P3 form. She later positively identified the appellant in court. PW2, Geoffrey Imwaka Lutiali, the caretaker, was alerted to a disturbance at the complainant's residence. Upon arriving, he found neighbors gathered and was informed of the attack. While inspecting the house, he discovered a blood-stained knife and sheets in the master bedroom.
7. Along with another witness, PW3, Mike Ingondo, he attempted to pursue the assailants but was unsuccessful. PW4, Arthur Ibrahim Aden, a neighbour, received a call about the incident and rushed to the scene. He found PW1 injured, bleeding from the mouth, and in distress. Blood was visible on the bed, along with the knife. He accompanied PW1 to the hospital and later gave his statement, confirming that he had seen the appellant at the complainant's home before.
8. PW5, Kamau Mariga, a police surgeon, presented medical evidence confirming that PW1 had suffered assault-related injuries, including abrasions on her face and elbow, strangulation marks, and tenderness on her upper body.
9. PW6, PC Samuel Kinyita, the investigating officer, visited the crime scene, where he found household items scattered. He traced the appellant using her phone number and arrested her on July 2, 2023, in Gachie, observing that her finger was still injured, consistent with PW1's self-defence claim. The knife used in the attack was presented in court.
10. PW7, Dr. Timothy Olubayo, submitted PW1's medical report, which confirmed the presence of strangulation marks and facial abrasions from the attack. She was treated and discharged as an outpatient.
11. In her defence, the appellant stated that she had been working for PW1 for two and a half months, with an agreed salary of Kshs. 15,000. However, she claimed that PW1 had only paid her Kshs. 7,000, leaving a balance of Kshs. 8,000 in wage arrears. On the day of the alleged incident, she visited PW1's home with her sister to demand the unpaid wages. According to her account, PW1 pushed her during the confrontation, causing an injury to her middle finger. She admitted that she did not seek medical treatment for the injury or report the matter of unpaid wages to the authorities in a timely manner.
12. The appellant was convicted of the offence of robbery with violence. 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”.



13. As regards the offence of robbery with violence, the prosecution was required to prove beyond reasonable doubt that the appellant stole and during the said theft threatened or used actual violence against the complainant.
14. Testimonies from PW1, PW2, and PW4 consistently confirmed the presence of a knife at the crime scene, which was later produced in court by the investigating officer, PW6. The court acknowledged that a knife is a dangerous weapon, thereby satisfying the first element of the offence, which requires the presence of an offensive or dangerous weapon during the commission of the crime.
15. Additionally, both the complainant and the appellant admitted that the appellant had visited PW1's home on the material day in the company of another woman, whom she claimed was her sister. The prosecution's evidence demonstrated that the two assailants acted in concert, physically overpowering the complainant. The appellant strangled PW1 using a piece of cloth, while her accomplice pinned her down and covered her face with a pillow, preventing her from resisting or calling for help. This coordinated physical assault constitutes the second element of robbery with violence, which is the use of force or threats of violence against the victim.
16. The extent of the violence was further corroborated by medical evidence presented in court. PW5, the police surgeon, and PW7, the doctor from Jalaram Medical Services, both examined the complainant and provided consistent testimonies regarding her injuries. The P3 form and medical report confirmed that PW1 had suffered strangulation marks on her neck, facial abrasions, and tenderness on her abdomen, throat, and limbs. These injuries align with her account of being attacked and restrained, reinforcing the prosecution's assertion that actual physical force was used during the robbery.
17. The final element of the offence, identification was also firmly established. PW1 and her neighbour, PW4, identified the appellant as the perpetrator. Having known the appellant as PW1's house help and having interacted with her on multiple occasions, PW4 provided independent confirmation of her identity. This corroboration eliminates the possibility of mistaken identity and further strengthens the prosecution's case.
18. The evidence further confirmed that during the incident the complainant's money was stolen by the appellant and her sister. There was therefore the element of theft.
19. In sum, the prosecution successfully proved all the elements of robbery with violence: the use of a dangerous weapon, the application of force, and the positive identification of the assailants. The overwhelming evidence, supported by witness testimonies, medical reports, and forensic findings, leaves no doubt that the complainant was subjected to a violent and premeditated robbery.
20. The upshot of the analysis above is that the appellant's conviction is upheld.
21. With regard to the sentence, the appellant was sentenced to twenty (20) years imprisonment. During sentencing, the court considered the pre-sentence report, and the aggravating circumstances surrounding this case and exercised discretion. Based on this premise, I see no reason to interfere with the sentence.
22. In the end, the appeal is found to be lacking in merit and is dismissed in its entirety.

Orders accordingly.

JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 11TH DAY OF MARCH 2025

D. KAVEDZA

JUDGE



In the presence of:

Appellant Present

Mutuma for the Respondent

Tonny Court Assistant

