



**Machani & another v Republic (Criminal Appeal E106 & E107 of 2024
(Consolidated)) [2025] KEHC 4469 (KLR) (8 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 4469 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL E106 & E107 OF 2024 (CONSOLIDATED)**

DR KAVEDZA, J

APRIL 8, 2025

BETWEEN

TONNY MACHANI 1ST APPELLANT

JOHN MUSYOKA OTIENO 2ND APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal against the original conviction and sentence delivered on 26th September 2024 by Hon. W. Lopokoiyit (S.R.M) at Kibera Chief Magistrate's Court Criminal Case no. E012 of 2023 Republic vs John Musyoka Otieno and Tonny Machani)

JUDGMENT

1. The appellants were jointly charged and convicted of the offence of robbery with violence contrary to section 296(2) of the *Penal Code*. The particulars are that on 29th December 2022, the appellants jointly with others not before court, at Gatwekera Area in Kibra Sub-county within Nairobi County robbed Anthony Onyango of cash Kshs. 400,000, scratch cards valued at Kshs. 2,100, six phones, five POS bank machines, three POS chargers, and one Bluetooth radio property of Alloys Okello, and immediately before that robbery assaulted the said Anthony Okello causing him injuries. They were each sentenced to death.
2. Being aggrieved, the appellants filed their respective appeals challenging their conviction and sentence which were consolidated by this court. In their petition of appeal, they challenged the totality of the prosecution's evidence against which he was convicted. They urged the court to quash his conviction and set aside the sentence imposed.
3. As this is a first appeal, I am required to re-evaluate the evidence tendered in the trial Court and come to an independent conclusion as to whether or not to uphold the convictions and sentences. This task



must have regard to the fact that I never saw or heard the witnesses testify (see *Okeno v Republic* [1973] EA 32).

4. The prosecution's case was as follows: PW1, Antony Onyango, testified that on 29th December 2022 at around 10:00 p.m., while closing his shop, he was attacked by a gang of armed robbers who covered his face with his jacket and stabbed his hand multiple times. The attackers stole items including five bank agent machines (for KCB, Equity, and Cooperative Bank), six Mpesa phones, a Tecno Camon 8 smartphone, PW2's driving license and Huduma card, and Kshs. 400,000 in cash, all stored in three bags. He was later taken to Mbagathi Hospital and reported the matter at Kibera Police Station. In court, he identified some recovered items but stated none of the appellants were among the attackers, although he saw them under security lights.
5. PW2, Aloyce Okello Wandera, PW1's brother, reported the robbery at Kibera Police Station after taking PW1 to the hospital. He later received a call from Equity Bank notifying him of a Kshs. 25,000 transactions were made using one of the stolen agent lines. The transaction, linked to number 0715xxxxxx, occurred on 30th December 2022, using a PIN written on a paper among the stolen items. Police later asked him to identify the recovered property, including his ITEL and Tecno phones, driving license, and Huduma card. While he confirmed ownership, he could not identify the suspects from whom the items were recovered.
6. PW3, Dr. Brenda Omwenga, confirmed PW1's injuries, classifying them as harm, and presented a P3 form dated 4th January 2023.
7. PW4, a minor M.O., testified that on 30th December 2022, the 2nd appellant gave him a Tecno phone to charge. On 1st January 2023, both he and 2nd appellant was arrested for being in possession of the stolen phone.
8. The investigating officer, No. 23953 PC Stephen Musyoka, testified that a stolen phone was first recovered from one Magrine Owino, who led officers to the 2nd appellant. On 2nd January 2023, the 1st appellant was arrested in possession of a Bluetooth speaker, two machetes, an ATM card reader, and the complainant's Huduma card and driving license. The 1st appellant signed an inventory form for the recovered items but later claimed a person named Brandon gave them to him.
9. When placed on their defence, both appellants denied the charges. DW1, John Otieno maintained that he had been given one of the phones by one Brandon and then passed it on to a girl to charge it for him. Thereafter on 1.1.2024, he was arrested by persons alleging that he had been involved in theft. DW2, Tonny Machani denied the charges and stated the phones that were recovered were placed in his pocket during his arrest.
10. The appeal was canvassed by way of written submissions which have been duly considered and there is no need to rehash them.
11. The complainant, PW1, testified that he was violently robbed by a gang armed with knives. However, he clearly stated that none of the appellants were among the attackers and he could not identify them. As a result, the key element of positive identification, crucial in proving the offence of robbery with violence under Section 296(2) of the *Penal Code*, is lacking. Without direct evidence linking the appellant to the violent robbery, a conviction on that charge cannot stand.
12. Conversely, the prosecution presented compelling evidence implicating the appellants in the offence of handling stolen property. Shortly after the robbery, items belonging to the complainants, including phones, a Bluetooth speaker, ATM card reader, driving license, and Huduma card, were recovered from the appellants. A minor (PW4) testified that the 2nd appellant, gave him a stolen phone to charge.



The investigating officer indeed confirmed the recovery of these items and noted that the 2nd appellant claimed to have received the phone from one Brandon, a claim that was unsubstantiated and lacked credibility.

13. According to Section 322(2) of the [Penal Code](#), possession of recently stolen property without a satisfactory explanation raises a presumption of knowledge or belief that the property was stolen. In this case, the prosecution proved that the appellants were found in possession of such property and failed to offer a reasonable explanation. Therefore, while the offence of robbery with violence was not proved beyond reasonable doubt, the evidence supports a conviction for handling stolen property.
14. The conviction for the offence of robbery with violence contrary to section 296(2) of the [Penal Code](#) is hereby quashed and substituted with a conviction for the offence of handling stolen property contrary to section 322(2) of the [Penal Code](#) for which a sentence of seven (7) years imprisonment is imposed against the appellants.

Orders accordingly.

RULING DATED AND DELIVERED VIRTUALLY THIS 8TH DAY OF APRIL 2025

D. KAVEDZA

JUDGE

In the presence of:

Onsembe for the Appellants

Mutuma for the State

Tonny Court Assistant

