



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Okoth v Republic (Criminal Appeal E086 of 2024)
[2025] KEHC 4422 (KLR) (7 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 4422 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL E086 OF 2024**

DR KAVEDZA, J

APRIL 7, 2025

BETWEEN

ANDREW THOMAS OKOTH ALIAS MSANII APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal against the original conviction and sentence delivered by
Hon. Z. Abdul (PM) on 15th August 2024 at Kibera Chief Magistrate's Court
Criminal Case No. E917 of 2023 Republic vs Andrew Thomas Okoth alias Msanii)*

JUDGMENT

1. The appellant was charged and convicted on two counts of offences: Count I robbery with violence contrary to section 296(2) of the *Penal Code* and Count II Malicious damage to property contrary to Section 339(1) of the *Penal Code*. He was sentenced to forty (40) years imprisonment in Count I and five (5) years imprisonment in Count II to run concurrently.
2. Aggrieved, he filed an appeal challenging his conviction and sentence. In his petition of appeal, he challenged the totality of the prosecution's evidence against which he was convicted. He urged the court to quash his conviction and set aside the sentences 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 appeal was canvassed by way of written submissions which have been duly considered and there is no need to rehash them.



5. The prosecution case was as follows: PW1, Leah Wambu Mbithi, a scrap metal dealer, testified that on 5th November 2023, at around 8:00 pm, while closing her business, a young man approached her and said, "tunataka ya macho." When she inquired about his intentions, the appellant, whom she knew as "Msanii," grabbed her handbag, leading to a struggle. Her employee, PW3 Geoffrey Okoth, intervened, asking the appellant what the issue was. The appellant then shouted at the Chief, claiming PW1 was resisting. The Chief accused her of pretending to be without money despite having built structures in the area.
6. A crowd gathered as she cried out, reminding the Chief that her husband had been killed in the same area two weeks prior, and her mother a year earlier. Her cries attracted members of the public, prompting the Chief to leave in embarrassment, though he warned he would return the next day.
7. The following morning, at around 10:00 am, the appellant returned with a group of men. Seeing them, PW1 locked her business gates and went inside. Minutes later, she heard banging as the gate was forced open. The intruders ransacked the premises, looting and damaging property. One of the men, identified as Rasta, snatched Kshs. 2,000/- from her hand. The appellant then ordered her to sit and demanded Kshs. 50,000/-, threatening to demolish her building if she failed to comply.
8. The appellant further threatened her, insisting she withdraw the murder case concerning her husband or face death and the destruction of her property. As members of the public gathered, the assailants fled. She later discovered that Kshs. 10,000/- was missing, and her television set was damaged. She reiterated that "Msanii" was the appellant. During cross-examination, she maintained that the appellant had robbed her.
9. PW2, Jane Nyaboke, an employee of PW1, corroborated her testimony, stating that on 5th November 2023, at 8:00 pm, after closing the business, a group of men surrounded them and demanded money. PW1 refused, insisting she had none. The Chief, who was present, declared she needed to be taught a lesson for constructing houses in the area while claiming financial difficulty. The next day, the same group, led by the appellant, broke into the premises, assaulted PW1, stole her handbag, and damaged the television set. On cross-examination, PW2 identified the appellant as the ringleader who took the handbag.
10. PW3 confirmed he was present during both incidents and testified that the appellant and his accomplices caused chaos, stole from PW1, and destroyed property. He stated that the appellant had repeatedly visited their workplace, issuing threats to PW1 to vacate the area.
11. PW4 and PW5, also employees of PW1, provided similar accounts of the events on 5th and 6th November 2023. They testified that the appellant led a group of men to threaten their employer into handing over money. On 6th November, they broke into the premises, damaged the gate, and stole PW1's handbag. They described the appellant as particularly aggressive in his demands for money.
12. PW6, the Investigating Officer, confirmed that the matter was reported at Lang'ata Police Station. He corroborated the testimonies of the other witnesses and detailed the investigative steps taken, ultimately leading to the appellant's arrest and charges.
13. In his defence, the appellant gave a sworn statement, denying the allegations. He claimed that upon his arrest, the Investigating Officer informed him he would be charged with robbery with violence, as per PW1's report. He maintained his innocence, stating that he had been tasked by the Chief to report new construction activities in the area. He claimed he had merely accompanied the Chief to speak with PW1, during which she gave the Chief money, though he was unaware of its purpose. During cross-examination by the prosecution, the appellant acknowledged knowing PW1 but denied having any



personal dispute with her. He insisted he never attacked or stole from her, maintaining his innocence throughout the proceedings.

14. In count, I, the appellant was charged with 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”.
15. For a conviction under Section 296(2) of the *Penal Code*, the prosecution must prove at least one of the following elements: use or threat of violence, involvement of multiple assailants, use of an offensive means, or theft or attempted theft.
16. In this case, PW1 testified that the appellant and his accomplices forcibly took her handbag, money, and valuables while issuing threats. PW2 to PW5 corroborated that the appellant’s group physically overpowered PW1 and damaged her property. The evidence further established that the appellant acted with a group of men who broke into PW1’s premises, assaulted her, and looted property, thereby fulfilling the requirement of multiple assailants.
17. Although no weapon was specifically mentioned, the violent manner in which the robbery was conducted—including breaking into PW1’s premises, ransacking her business, and issuing death threats—satisfied the requirement of using offensive means.
18. Additionally, the prosecution proved that property was stolen, including Kshs. 10,000/-, Kshs. 2,000/- separately, and PW1’s handbag. Given that the prosecution’s evidence satisfied at least two of these elements, the offence of robbery with violence was established beyond reasonable doubt. The appellant’s defence did not cast doubt on the prosecution’s case. Accordingly, the conviction in Count I was proper and is affirmed.
19. Regarding Count II: Malicious Damage to Property under Section 339(1) of the *Penal Code*, the law provides that any person who wilfully and unlawfully destroys or damages property is guilty of an offence punishable by imprisonment for up to five years. The elements of this offence, as established in *Wilson Gathungu Chuchu v Republic* [2018] eKLR, require proof of ownership of the damaged property, proof of its destruction or damage, proof that the accused caused the damage, and proof that the destruction was wilful and unlawful.
20. PW1 confirmed ownership of the business premises, gate, television, and other affected valuables, with the appellant having no lawful claim over the property. The prosecution proved that on 6th November 2023, the appellant and his accomplices forcibly broke into PW1’s premises, damaging the gate and ransacking the business. Witnesses confirmed that the television set was destroyed and other items vandalised. PW1, PW2, PW3, PW4, and PW5 all identified the appellant as the leader of the group responsible for the destruction.
21. Their testimonies confirmed that he was present, issued orders, and participated in the unlawful act. The prosecution further demonstrated that the appellant led the group with the intent to intimidate PW1 and force her to surrender money, proving that the damage was wilful and not accidental.
22. Since the prosecution’s evidence satisfied all elements of the offence, the charge of malicious damage to property was proven beyond reasonable doubt. The appellant’s defence did not undermine the prosecution’s case, which was well corroborated. Accordingly, the conviction in Count II is affirmed.



23. On sentence, the appellant was sentenced to forty years imprisonment in Count I and five years in Count II to run concurrently. 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 considering his young age and mitigating circumstances.
24. Therefore, the appeal on the sentence succeeds. The sentence of forty years imprisonment in count I is hereby substituted with a sentence of twenty (20) years imprisonment. The sentence of five (5) years imprisonment in Count II is substituted with a sentence of three (3) years imprisonment. The sentences shall run concurrently from 17th June 2023 the date of the appellant's arrest pursuant to section 333(2) of the [Criminal Procedure Code](#), Cap 75 Laws of Kenya.

Orders accordingly.

JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 7TH DAY OF APRIL 2025.

D. KAVEDZA

JUDGE

In the presence of:

Appellant Present

Mutuma for the Respondent

Tonny Court Assistant

