



REPUBLIC OF KENYA



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**Kiprotich v Republic (Criminal Appeal E059 of 2022)
[2025] KEHC 6211 (KLR) (20 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 6211 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
CRIMINAL APPEAL E059 OF 2022
JK NG'ARNG'AR, J
MAY 20, 2025**

BETWEEN

ELIJAH KIPROTICH ALIAS TELEL APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal from the judgment of Hon. L. Kiniale PM dated 21st September, 2022 at the Magistrate's Court at Bomet, Criminal Case No.E 1040 of 2020)

JUDGMENT

Introduction and Background

1. The Appellant was charged in the lower court with the offence of robbery with violence contrary to 295 as read together with section 296(2) of the *Penal Code*. The particulars were that on 29th August, 2020 at around 2030hours in Bomet township within Bomet County the Appellant robbed Cheruiyot Kiprotich of 1 briefcase green in color, containing assorted clothing, 1 pair of black leather shoes, 1 kg of sugar, 1 kg of tea leaves, 1 bash of washing bar soap, cash of ksh. 500 and 1 white sack of potatoes all valued at 3,950/= and immediately before that time of such robbery beat the said Cheruiyot Rotich.
2. There was an alternative charge of handling stolen property contrary to section 322(1) of the penal code as read together with 322(2) of the Penal code. The particulars were that the accused person on the 29th August, 2020 at around 2030hrs at Soi garage area in Bomet Township within Bomet County otherwise than in the course of stealing jointly, dishonestly retained 1 brief case green in colour, 1 T-shirt and 25Kg of irish potatoes knowing them to be stolen property.
3. The accused further face a second count of grievous harm contrary to section 234 of the Penal code. The particulars were that on 29th August, 2020 at around 2030hours in Bomet township within Bomet County jointly and unlawfully did grievous harm to Cheruiyot Kiprotich.



4. Upon hearing the case, the learned trial magistrate found that the Respondent (“the Prosecution”) had proven its case beyond reasonable doubt and proceeded to convict and sentence the Appellant as per section 215 of the Criminal procedure code to a jail term of 20 years. It is this decision that the Appellant has appealed against through grounds set out in his Petition of Appeal received on 17th November, 2022. The respondent relies on written submissions received on 25th December, 2023.

Analysis and Determination

5. This is the first appellate court and in *Okeno v. R* [1972] EA. 32, the Court of Appeal for East Africa laid down what the duty of the first appellate court is. It is to analyze and re-evaluate the evidence which was before the trial court and itself come to its own conclusions on that evidence without overlooking the conclusions of the trial court. There are instances where the first appellate court may, depending on the facts and circumstances of the case, come to the same conclusions as those of the lower court. It may reverse those conclusions and there is nothing objectionable in doing so, provided it is clear that the court has considered the evidence on the basis of the law and the evidence to satisfy itself on the correctness of the decision. (see *David Njuguna Wairimu v Republic KSM CA CRA No. 28 of 2009* [2010] Eklr and *Pandya v Republic*(1957) EA 336)
6. The Appellant’s appeal is premised on two grounds. First, the appellant contends that the trial court erred in law and fact by meting out too long sentence even though it was legal, did not serve the objective of sentencing as listed in page 15 paragraph 4(1) of the sentencing, 2016. Secondly that the learned magistrate erred in by failing to consider mitigation. In essence the appeal herein is only on sentence and not conviction as per undated amended ground of appeal and serialized as KER/202/2020/LS.
7. The trial court meted a 20 year sentence which by law is permissible under section 215 of the Criminal Procedure Act which provides as follows:

“The court having heard both the complainant and the accused person and their witnesses and evidence shall either convict the accused and pass sentence upon or make an order against him according to law, or shall acquit him.”
8. I have considered the offence herein and the circumstances and also the mitigating circumstances. The Sentencing Policy Guidelines 2023 outlines the objectives of sentencing at paragraph 1.3.1 as follows:-

“Sentences are imposed to meet the following objectives. There will be instance in which the objectives may conflict with each other in so far as possible, sentences imposed should be geared towards meeting the objectives in totality.

 - i. Retribution
 - ii. Deterrence
 - iii. Rehabilitation
 - iv. Restorative justice
 - v. Community protection
 - vi. Denunciation
 - vii. Reconciliation
 - viii. Reintegration.”



9. From the above, it is clear that the sentencing policy has the twin objective of deterrence and correction. Each case must also be considered on their own circumstance. See *Thomas Mwambu Wenyi v Republic* (2007) KECA 756 KLR)

10. I have gone through the record, the evidence adduced and the witness testimonies and I clearly note the offence points at the appellant glaringly. I have also considered the submissions by the Respondent. I find that the Appellant was properly convicted and sentenced by the trial court. The trial court while taking into consideration the mitigating factors, exercised its discretion and sentence the Appellant to 20 years' imprisonment. It should be noted that the 20 years meted is not the maximum sentence prescribed by law. Section 295. Defines the offence of robbery as follows:

“Any person who steals anything, and, at or immediately before or immediately after the time of stealing it, uses or threatens to use actual violence to any person or property in order to obtain or retain the thing stolen or to prevent or overcome resistance to its being stolen or retained, is guilty of the felony termed robbery.”

11. Section 296 provides the punishment of robbery as follows:

”(1) Any person who commits the felony of robbery is liable to imprisonment for fourteen years.

(2) 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.

12. I note from the evidence adduced by the trial court that the appellant was in the company of his co-accused and immediately after the time of the robbery, they wounded the victim/complainant in this case.

13. I have also considered the mitigating circumstances by the accused. The place and significance of mitigation was expounded by the court in the case of *Joseph Kaberia Kahinga & 11 others v Attorney General* [2016] KEHC 3275 (KLR) in the following words:-

“But what is mitigation in our context? Simply understood, the word mitigation means the act of lessening or making less severe the intensity of something unpleasant such as pain, grief or extreme circumstances. It is an act of making a condition or consequence less severe and in our case it is the act of making a punishment or sentence in a criminal case less severe. In n Black's Law Dictionary Free Online Legal Dictionary 2nd Ed. mitigation is defined as:

“Alleviation; abatement or diminution of a penalty or punishment imposed by law. ‘Mitigating circumstances’ are such as do not constitute a justification or excuse of the offence in question, but which, in fairness and mercy, may be considered as extenuating or reducing the degree of moral culpability.”

Conclusion and Disposition

1. In the foregoing and for the reasons stated above, I find that the trial court's determination was sound, judicious and based on the evidence on record and there is no sound reason to interfere with the trial courts conviction and sentence.

Consequently, and accordingly this court dismisses the Appellant's appeal and affirm the trial court's findings on both conviction and sentence.



JUDGEMENT DELIVERED, DATED AND SIGNED THIS 20TH DAY OF MAY, 2025.

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J.K.NG'ARNG'AR

JUDGE

Judgement delivered in the presence of the Appellant and Mr. Njeru for for the Respondent. Siele/Susan (Court Assistant).

