



REPUBLIC OF KENYA



**KENYA LAW**  
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**Wamalwa v Republic (Criminal Appeal E051 of 2024)  
[2025] KEHC 6813 (KLR) (26 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 6813 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KITALE  
CRIMINAL APPEAL E051 OF 2024**

**RK LIMO, J**

**MAY 26, 2025**

**BETWEEN**

**CLEOPHAS WAMALWA ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*((Appeal arising out of the conviction and sentence of Hon. S.N. Makila (Principal Magistrate) in Kitale Chief Magistrate's Court Criminal E714 OF 2023 delivered 12<sup>th</sup> August 2024))*

**JUDGMENT**

1. Cleophas Wamalwa, the appellant herein was charged before CM's Court CR Case No.E714 of 2023 with 3 counts namely;
  - i. Robbery with Violence contrary to Section 295 as read with Section 296(2) of the [Penal Code](#). The particulars were that on 23/12/2022 at Kambi Miwa Area within Trans-Nzoia County jointly with others not before court robbed MOSES WANJALA of 2 pairs of shoes, 2 mobile phones Nokia C21 and Techno mobile phone and Kshs.24,000/- in cash all valued at Kshs.45,000/- and immediately before or immediately after the time of such robbery wounded/beat/struck the said Moses Wanjala.
  - ii. Handling Stolen Goods contrary to section 322(1) of the [Penal Code](#). The particulars are that on 11/2/2023 at Sikhendu area within Trans-Nzoia County otherwise than in the course of stealing dishonestly undertook retention of one mobile phone of Make Nokia C21 valued at Kshs.15,500/- knowing or having reason to believe it to be stolen.
  - iii. Escape from Lawful Custody contrary to section 123 as read with Section 36 of the [Penal Code](#). The particulars were that on 11/2/2023 at Sikhendu area within Trans-Nzoia County being in lawful custody of PC Kibet Karama and PC Daniel Kiarie escaped the said custody.



2. The appellant denied all the charges but after trial he was found guilty of Count 1I and convicted. He was sentenced to serve 5 years in prison.
3. The appellant felt aggrieved and filed this appeal raising the following grounds namely;-
  - i. That the stolen phone was irregularly tendered in evidence.
  - ii. That the prosecution failed to prove its case that he was found in possession of a stolen phone.
  - iii. That the prosecution failed to carry out proper investigations.
  - iv. That his defence was not considered.
4. The evidence tendered at the trial in summary was that the complainant Moses Wanjala Wanyonyi boarded a Taxi within Kitale Town at around 9pm on the material day after enjoying the company of a friend at a Local Restaurant. The taxi took him home but did not manage to reach his destination. It transpired that he was attacked and robbed and lost consciousness in the process. When he came to he found himself admitted at Moi Teaching and Referral Hospital on 5/12/2023. The date of the robbery was 23/12/2022. He stated that he lost phone Nokia C21, Techno mobile phone, flash disc, wallet containing Kshs.24,000/- and his ID.
5. He told the trial court that he did not know who robbed him what he knew was that he sustained serious injuries to the head caused by a blunt object.
6. John Koima (PW1) a Clinician from Kitale County Hospital testified that the complainant was first taken to Kitale County Hospital on 23/12/2022 and that he examined him. He found him unconscious with multiple body injuries caused by a blunt object. He stated that a CT scan and MRI were done which showed that he suffered temporal fractures with hemorrhage. He tendered Discharge Summary from Kitale County Hospital, Cherangany Hospital and Discharge Summary from Moi Teaching & Referral Hospital as PExhibit 1, 2 and 3 respectively He also tendered P3 From as PExhibit 4.
7. Kennedy Wanjala (PW3) testified that when he took his mobile phone for repairs to one Godwin Chemiat he gave him a phone to be using in the meantime as his was being repaired. He stated that 2 days later he was arrested by police for possessing a stolen phone. He identified the stolen phone given to him as Nokia C21. He stated he took the police to PW4 who had given the phone.
8. Godwin Chemiat (PW4) a phone repairer in Naitiri, testified that he was a Technician skilled in repairing mobile phones, Radios and TVs. He stated that on 8/2/2023 the appellant took to him a phone. A Nokia C21 for repairs as it was having charging problems. He stated that the appellant told him he would go for the phone in a week's time and that when PW3 – a customer he knew well took his phone for repairs, he gave the Nokia C21 to be using in the meantime as he repaired his mobile phone. He tendered a receipt book from where he gave the appellant a receipt as PExhibit 7.
9. Violet Wanyonyi (PW5) testified that she was informed that the complainant was being admitted at Kitale County Hospital on 24/12/22 and that she visited there and found him unconscious. She stated that she was told that a CT Scan was needed upon which she transferred him to Cherangany Nursing Home where he was admitted for 7 days unconscious.
10. PC Daniel Kiarie (PW7) a police officer from Kwanza police station testified that on 11/2/23 he in the company of PC Kibet went to Naitiri pursuing a stolen phone. He stated that they traced the phone to one Kennedy (PW3) at Naitiri Shopping Centre who took them to Godwin (PW4). He stated that PW4 told them his customer the appellant herein had taken the phone to him for repairs. He stated



that they were led to where the appellant lived and that when they inquired from him about the phone he became rude before taking off. He stated that they managed to arrest him later on 26/2/23. The officer identified the phone a Nokia C21 which they recovered from PW3.

11. PC Kibet Karama (PW8) also testified and told the trial court that on 29/12/23 he was at report office when one Joshua Wekesa reported that his brother (complainant) had boarded a Taxi on 23/12/22 at 9pm and woke up robbed and injured at Cherangany Hospital. He testified that they tracked the stolen phone to Naitiri and found it in possession of PW3 who led them to PW4. He stated that the phone repairer (PW4) took them to the person who had taken the Nokia phone for repairs and took them to appellant's house. He stated that the appellant reacted badly and fled after pretending to go inside the house and using the back exit he fled from the officers. He stated that the appellant resurfaced later and was arrested. He tendered the stolen Nokia C21 phone as PExhibit 6.
12. When placed on his defence, the appellant denied giving the stolen phone to PW4 for repairs. He denied attacking and robbing the complainant adding that he was not found with the stolen phone. He however conceded that PW4 was known to him and he had no issues with him.
13. The trial court evaluated the evidence tendered and found that the prosecution had not proved Count 1 and III beyond doubt but found that Count II had been proved to the required standard adding that the appellant gave no explanation on how he came into contact with the stolen phone.
14. In his written submissions through counsel, the appellant contends that the finding by the trial court was erroneous because in his view there was no evidence linking him with the stolen phone. He submits that the prosecution's evidence did not reach the threshold. He relies on the case of *Moses Nato Raphael -vs- Republic (Nbi CR.A No.169 of 2014)* where the court dwelt on the standard of proof required in criminal cases.
15. He urges this court to re-evaluate the evidence tendered at the trial court and draw own conclusions.
16. The respondent has opposed this appeal vide written submissions dated 12/3/25 by Mark Mugun the Principal Prosecution Counsel.
17. Mr Mugun has submitted on necessary ingredients of the offence of Handling Stolen Property and has cited the case of Tembere -vs- Republic (1990) KEHC 43 KLR. The respondent contends the evidence of PW3 and PW4 were critical in establishing the necessary ingredients which are an accused must dishonestly receive or retain stolen goods having reason to believe that the same is stolen. The State points out that PW3 took his phone to PW4 for repairs and in the intervening period PW4 gave him a Nokia C21 which he had earlier received from the appellant.
18. The respondent submits that the stolen phone was eventually traced to the appellant and that pursuant to Section 111 of the *Evidence Act*, the burden shifted to him to explain how he came into the possession of the stolen phone. The State submits that PW3 and PW4 gave a plausible account how they came into possession of the stolen phone but appellant instead of giving explanation fled from police officers. The State submits that the act of fleeing alone denotes that he knew he had committed an offence.
19. This court has considered this appeal and the response made. My role as a first appellate court is to re-evaluate the evidence tendered at the trial court with a view to drawing own conclusions.
20. The appellant as observed above was charged with 3 counts but was only convicted in 2<sup>nd</sup> Count of Handling Stolen Property contrary to section 322(1) of the *Penal Code*.
21. There are 3 elements which must be proved in a case of Handling Stolen Property. The ingredients are:-
  - i. The accused must know or have reasons to believe that the goods are/were stolen.



- ii. It must be shown that he dishonestly received or retained the goods.
  - iii. The accused offers no explanation or good reason as to why he was found in possession of the stolen goods.
22. In this matter the police officers PW7 and PW8 gave evidence on how they received a report of Robbery with Violence and the fact that some of the stolen goods were 2 mobile phones a Nokia C21 and a Techno.
23. They managed to trace Nokia C21 to the appellant after PW3 and PW4 gave good account on how they were found in possession of the stolen phone. When the stolen phone was traced to the appellant instead of giving reasons, he took off. I agree with the respondent that the act of fleeing from police officers who asked about the stolen phone, is an indictment. The case cited by the State of Kennedy Wesonga Kiroba –vs- Republic (2013)eKLR captures the principle concisely. A person who flees upon being accused of a wrong doing and provides no explanation for that conduct is presumed that he ran away because of guilt. The appellant not only fled from police officers but went underground for 2 months. He resurfaced and upon arrest he did not say why he had run away and how he came into contact with the stolen phone. When placed on his defence, his defence consisted of mere denials. He admitted that PW4 was well known to him that he had no grudge against him and therefore had no reason to lie or frame him.
24. This court finds that the trial court evaluated the evidence tendered before it well with respect to Count II and reached the correct verdict. If anything the appellant is lucky that the State did not cross-appeal with respect to his acquittal in Count 1. The evidence tendered was sufficient to draw inference that he was guilty as well in that Count. But since there is no cross appeal here, I will leave it at that.

In the premises, this court finds no merit in this appeal. The same is dismissed. The conviction and sentence which I found lenient are upheld.

**DELIVERED, DATED AND SIGNED AT KITALE THIS 26<sup>TH</sup> DAY OF MAY, 2025.**

**HON JUSTICE R.K. LIMO**

**KITALE HIGH COURT**

Judgment delivered in open court

In the presence of;

Ms Rop for Respondent

Cleophas Wamalwa – Appellant – present

Duke/Chemosop – court assistants

