



**Irasia v Republic (Criminal Appeal E014 of 2025)
[2025] KEHC 8372 (KLR) (17 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8372 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL E014 OF 2025
DR KAVEDZA, J
JUNE 17, 2025**

BETWEEN

BRIAN IRASIA APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal against the original conviction and sentence delivered on 20th December 2024 by Hon. C. Njagi (PM) at Kibera Chief Magistrate's Court Criminal Case no. E1441 of 2024 Republic vs Brian Irasia)

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 are that the appellant on the 28th day of June 2024 around 2000h in the Lindi area in Kibra sub-county within Nairobi County jointly with another not before the court, being armed with an offensive weapon namely a panga robbed Isaac Otieno of his mobile phone and at the time of robbery used actual violence to the said Isaac Otieno. He was sentenced to serve thirty (30) years imprisonment.
2. Being aggrieved, he filed the present appeal challenging the totality of the prosecution evidence against which he was convicted. He complained that the sentence imposed was harsh and excessive. He urged the court to quash the 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 four witnesses in support of its case. PW1, Isaac Otieno, stated that on the material day while walking home with his cousin, PW2 Lizzy Atieno, they encountered the appellant



- and one Maina. The two men demanded his belongings. PW1 handed over Kshs 50 to Maina, who insisted on receiving more via M-Pesa. Maina briefly left and returned, after which he demanded the complainant's phone. At this point, the appellant grazed PW1's cheek and struck his head with a panga. They then took his Huawei Y5 phone, valued at Kshs 10,500, for which he produced a receipt in court.
5. PW2 corroborated the account, stating that she escorted the complainant home, administered first aid, and later accompanied him to Palm Health Centre for treatment. PW3, Dr. Kamau Mariga, confirmed he examined the complainant and filled out the P3 form. He found generalised tenderness in the neck and right temporal region, consistent with blunt force trauma.
 6. Subsequently, PW1 and PW2 reported the matter at Kibera Police Station. PW4, PC Aden Galgalo, arrested the appellant in connection with the offence.
 7. At the close of the prosecution's case, the trial court found that a prima facie case had been established. In his defence, the appellant chose to remain silent.
 8. The appellant was convicted of the offence of robbery with violence.
 9. The appeal was canvassed by way of written submission which have been duly considered and there is no need to rehash them.
 10. 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”.
 11. To secure a conviction for robbery with violence under section 296(2) of the [Penal Code](#), the prosecution must prove one or more of the following elements: that the offender was armed with a dangerous or offensive weapon; that the offender was in the company of one or more other persons; or that the offender used or threatened to use actual violence during the robbery.
 12. First, the element of being armed is satisfied. The complainant testified that the appellant attacked him with a panga. A panga qualifies as a dangerous or offensive weapon. PW3, the police doctor, confirmed that the complainant suffered blunt trauma to the head and neck, consistent with an assault using such a weapon.
 13. Second, the offence was committed by more than one person. Both the complainant and PW2 stated that the appellant was in the company of another individual, identified as Maina, at the time of the attack. The concerted nature of the robbery meets this element.
 14. Third, the use of actual violence was established. The complainant was physically assaulted. His cheek grazed and his head was struck during the robbery. The injuries were corroborated by the medical evidence of PW3.
 15. Finally, as to identification, both the complainant and his cousin confirmed they recognised the appellant from prior encounters and social media. They also positively identified him in court.
 16. The cumulative evidence supports each of the statutory elements. The conviction was, therefore, sound in law.



17. With regard to the sentence, the appellant was sentenced to thirty (30) years imprisonment. During sentencing, the court considered the pre-sentence report, the appellant's mitigation, and being a first offender.
18. Although sentences are intended, inter alia, to punish an offender for his wrongdoing, they also aim to rehabilitate offenders to renounce their criminal tendencies and become law-abiding citizens. I have no doubt that the sentence imposed by the trial court, in this case, was lawful but considering that the appellant was a first offender, I am satisfied that the sentence was excessive.
19. For the above reason, I hereby set aside the sentence of thirty (30) years imposed by the trial court and substitute it with a sentence of twenty (20) years imprisonment. The sentence shall run from 9th July 2024, 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 17TH DAY OF JUNE 2025.

D. KAVEDZA

JUDGE

In the presence of:

Appellant Present

Mutuma for the Respondent

Tonny Court Assistant

