



REPUBLIC OF KENYA



KENYA LAW
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**Tawfiq v Republic (Criminal Appeal E085 of 2023)
[2025] KEHC 12951 (KLR) (26 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 12951 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CRIMINAL APPEAL E085 OF 2023
WM KAGENDO., J
JUNE 26, 2025**

BETWEEN

JUMA BAKARI TAWFIQ APPELLANT

AND

THE REPUBLIC RESPONDENT

(Appeal against the conviction and sentence of death in the Criminal Case No. E1720 of 2021 for the offence of robbery with violence contrary to Section 296(2) of the Penal Code by CM's Court at Mombasa before Honourable M. Mutuku CM dated and delivered on 15th August 202)

JUDGMENT

1. The Appellant herein has been charged with the offence of robbery with violence contrary to Section 296(2) of the Penal Code. The particulars of the offence are that:

The Appellant herein on the 12th day of August 2021, at Kibundani area in Likoni Sub-County, Mombasa County, jointly with others not before this court while armed with an electric shock stun gun and pangas robbed Mwinyi Juma Mwandoro of cash Kshs. 10,000 at and before the time of such robbery used actual violence on the said Mwinyi Juma Mwandoro.

2. The Appellant pleaded not guilty. He was found guilty and sentenced to death.

3. The Appellant prays for an Appeal on the grounds that:

1. The learned trial court Magistrate erred in law and facts by convicting the appellant to Death without considering that the charge of Robbery with violence was not proved beyond reasonable doubt.



2. The learned trial court Magistrate erred in law and facts by convicting the appellant to Death without considering that the appellant was denied a right to a fair trial pursuant to article 50(2) (p) of *the constitution*.
3. The learned trial court Magistrate erred in law and facts by convicting the appellant to Death imprisonment without considering his reasonable defence.
4. The Appellant prays that this appeal be allowed, conviction quashed, and the sentence set aside.

Determination

5. It is the duty of the first Appellate court to carefully examine and analyse afresh the evidence presented from the trial court and draw its own conclusion. An Appellant on a first appeal is entitled to expect the evidence as a whole to be submitted to a fresh and exhaustive examination. (See *Pandya vs. Republic* (1957) EA 336).

Whether the prosecution established its case against the Appellant beyond reasonable doubt?

6. The offence of robbery with violence is provided for under Section 295 as read with Section 296(2) of the Penal Code. It is rooted on the following ingredients as set out in the case of *Patrick Kirimi and Jacobu Kanuu v Republic*:

“...theft of the complainant’s property, the offender was armed with a dangerous weapon, or he was in the company of one or more persons, or he wounds, beats, strikes or uses any form of violence to any person immediately before, during, or immediately after such robbery.

7. PW1 in his testimony says that two young men approached him and demanded Kshs. 200, which he refused to give them. They had a machete and an electric torch. PW4 was the Investigating Officer. He stated that in the course of his investigation, he received a stun gun from Administrative Police who told him that the gun had been dropped by the 1st accused as he ran from the scene. This satisfies the element of violence as there was one more than person and they wielded weaponry.
8. PW1, in cross-examination, stated that he lost Kshs. 10,000 from his butchery. He said that when he was accosted, he left the butchery for help and that is when the two accused persons stole the money. The money was never recovered.
9. The prosecution, therefore, adequately established a case against the two accused persons, beyond reasonable doubt. The accused persons only brought up the issue of the police demanding a bribe in their defence, as an afterthought.

Whether the Appellant was denied his right to fair trial?

10. The right to fair trial is enshrined in Article 50(2)(e) of *the Constitution* of Kenya. There is no evidence that this right was infringed upon. The Appellant does not make any claim or give any evidence as to how his right to fair trial was infringed upon.

Whether the trial court erred in law by dismissing the Appellant’s defence?

11. The Appellant’s defence was that he was arrested after a football match and that when his parent’s came to see him, the police demanded a bribe. He was then framed after his parents were unable to pay the bribe



12. The trial court pointed out that the Appellant only brought up the issue of the police demanding a bribe as an afterthought. I tend to agree with this as the Appellant did not do anything to prove this claim in any way in the course of the trial.
13. Having considered the appellant's defence, it is clear that the same fell short in dislodging the prosecutorial evidence. I have no reason to differ from the findings of the trial magistrate who had the opportunity to hear and see the complainant as she testified and weigh the same against the appellant's defence and tested both their demeanour.
14. The question is whether this court should interfere with the sentence. In *James Kariuki Wagana – v- Republic* (2018) eKLR Prof. Ngugi. J (as he then was) stated- 'while the sentence of death is the maximum penalty for both- 'murder and robbery with violence the court has the discretion to impose any other penalty that it deems fit and just in the circumstances.' He argued that death penalty should be reserved for the most heinous levels of robbery with violence. In another persuasive decision Gikonyo J in *Paul Ndung'u Njoroge-v- Republic* (2021) eKLR considered a long term of imprisonment as appropriate where the violence did not cause death or grievous harm.
15. In this case, the Appellant did not cause death or grievous harm to the complainant. They were wielding weapons and there was more than one person, thus qualifying the charge of robbery with violence.
16. The current jurisprudence is that though the maximum penalty for robbery with violence is death, the court has the discretion to impose any other penalty based on the circumstances of the case. The trial magistrate's hand was not tied there was room for exercise of discretion. I find that a term of imprisonment is appropriate.
17. I set aside the death sentence and substitute with imprisonment for a term of thirty
18. In conclusion, I find that the appeal on conviction fails and is dismissed.

DATED, SIGNED AND DELIVERED AT NAIROBI VIRTUALLY THIS 26TH DAY OF JUNE 2025.

W. K. MICHENI JUDGE

In The Presence Of.

The Appellant(s).....

For The Respondent.....-mr Sirima.....

Court Assistant.....-bebora.....

Signed By: Hon. Lady Justice Wendy Micheni

The Judiciary Of Kenya.

