



**Koome v Republic (Criminal Appeal E039 of 2024)
[2025] KEHC 11232 (KLR) (28 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11232 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL APPEAL E039 OF 2024
SM GITHINJI, J
JULY 28, 2025**

BETWEEN

JACKSON KOOME APPELLANT

AND

REPUBLIC RESPONDENT

*(An appeal from the Ruling of Hon. M. A. Odhiambo (S.R.M)
in Meru Criminal Case No. 039 of 2024 delivered on 25/03/24)*

JUDGMENT

1. Jackson Koome, the Appellant herein was charged in the Lower Court with the offence of Robbery with violence, Contrary to Section 295 as read with Section 296(2) of the penal code.
2. The particulars of this offence are that on the 5th day of January 2023 at BBC Maili Saba area, Ruiru Rwarera Location in Buuri East Sub-County within Meru County, the Appellant robbed Geoffrey Kimathi Kinyua one Motorcycle Reg. No. KMGB xxxH make Boxer, valued at 147, 290kshs and before the robbery used actual violence on the said, Geoffrey Kimathi.
3. The prosecution case is briefly that the complainant herein who gave evidence as PW-1 is the owner of a Motorcycle Reg. No. KMGB xxxH BM 150 Red in Colour, Boxer in make. He was using the said Motorcycle for Bodaboda business in Isiolo.
4. The Appellant herein had hired him before to be taken to Maili Saba. That time the Appellant took the Complainant contacts.
5. On 5/1/2023 the Appellant called the victim. He said he wanted to be taken to Maili Saba to buy land. The victim took him using the said Motorcycle. They went to a place where the Appellant found a person with whom he deliberated on some issues. After they were done the Appellant asked the victim to drop him at a bank in town. On the way when they had done about 200 metres, the Appellant told



the victim to stop to enable him answer to a short call. He had a bag on the back. The victim told him to leave the bag. He left it as he went to a bush which was on the left side. As the victim waited for the Appellant to return, he was hit on the head with a stone and fell down. The Motorcycle also fell. When he raised his head he saw it's the Appellant who had hit him. The Appellant continued to attack him. The victim tried to escape and as he did so, the Appellant took the Motorcycle and rode off. The victim screamed and attracted neighbours to the scene. He told them what had happened. One of them who had a Motorbike carried him as they tried to chase after the assailant. They also called other Motor Cycle operators in the area asking them to be on lookout for the suspect. They described him and the Motorcycle. Lucky enough he was traced in Baria. He was held by members of the public mostly Boda Boda operators. He was beaten up. The Officers from Baria Police Post got to the scene and rescued him. They recovered the Motorcycle. Police from Kiirua Police Post also got to the scene and took over the matter.

6. The victim was notified of the arrest. He got to the scene and identified the assailant and his recovered Motorcycle.
7. The Appellant was taken to the hospital. While he was being admitted a knife was recovered from his pocket. Another knife had been recovered from his bag. After he was discharged he was charged with the offence carried in the charge sheet.
8. The Appellant in his defence denied the offence. He alleged that on the material day he had hired the victim to take him to buy a parcel of land. When they got to the place he received a call from a doctor who told him his son had passed on at Chaaria Hospital. He told the victim that he will hire the Motorcycle to pick his brother and an in-law. He then took the Motorcycle and left. He added fuel at Mungania. He then went to buy airtime. When we returned to where he had packed the Motorcycle he found four men. He took the Motorcycle and left. When he got to Baria Town there were young men. They were armed. One hit the Motorcycle and he fell down. They attacked him. They took his 43,000/= and shoes. The police rescued him and took him to the hospital. He was later charged. He was convicted of the offence and sentenced to serve 15 years imprisonment.
9. Dissatisfied with the said conviction and sentence, he appealed to this court on the grounds that:-
 1. The glaring irregularities and errors in the charge sheet were not considered and they occasioned miscarriage of justice.
 2. Defence was not considered and no cogent reason was given for it.
 3. The period spent in custody was not considered in the meted sentence, as stipulated by Section 333(2) of the C.P.C.
 4. His continued incarceration will impact and infringe on the rights of his children under Article 53(1) (e) of the Constitution and Sections 4(1) and 6(1) of the Children Act 2001.
10. The appeal was canvassed by way of Written Submissions and both parties filed their respective Submissions.
11. As the first Appellate Court, I have re-evaluated the charge, evidence adduced in the Lower Court, Judgment of the trial Court and sentence meted, Grounds of the Appeal and Submissions by both side.
12. In my view, the issue for consideration is whether the offence against the Appellant was proved by the prosecution beyond reasonable doubt.



13. The offence of Robbery with violence under Section 296(2) of the *Penal Code*, and as was well pronounced in the case of Johanna Ndungu –vs- Republic [1996] e KLR, requires establishment of only one of the following ingredients:-
 1. The offender was armed with a dangerous or offensive weapon or instrument;
 2. The offender was in Company of one or more other person(s);
 3. If the offender wounds, beats, strikes or occasions other form of personal violence to the victim or threatens to use actual violence to the victim.
14. The evidence of the victim (PW-1) shows that the Appellant was alone. He used a stone to hit the victim on the head and legs and so injured him. Dangerous weapon would include anything capable of causing death or serious injury. A stone would therefore fit as a dangerous weapon. His intent was to rob a Motorcycle of which he did. It was later recovered on the very same day in his possession. The evidence is credible and fully discloses the offence he was charged with.
15. The trial court rightly convicted him of the offence. His defence cant be true. The victim could not have let him go with Motorcycle without proper agreement on how much he was to pay for it and how he was to return it. The defence was rightly dismissed.
16. The offence carries a mandatory death sentence. The trial court must have been influenced by the decision in Francis Muruatetu on sentence for murder convicts, of which was clarified later that have no effect on cases of Robbery with violence. He was lucky then that he got a sentence of 15 years imprisonment, instead of a death sentence. I will let him ride on the same luck and not vary the sentence upward.
17. The bottom line is that the Appeal lacks merit and is hereby dismissed.

DATED AND DELIVERED AT MERU THIS 28TH JULY, 2025

S.M. GITHINJI

JUDGE

Apperances:-

Ms. Adhi for the state.

Appellant present at Meru G.K. Prison.

