



**Kibe & another v Republic (Criminal Appeal E004 of 2024)
[2025] KEHC 13213 (KLR) (25 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 13213 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL E004 OF 2024
DR KAVEDZA, J
SEPTEMBER 25, 2025**

BETWEEN

SSGT SAMSON MACHUA KIBE 1ST APPELLANT

SSGT BENARD MANTHU MULI 2ND APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal against the original conviction and sentence delivered by the court martial sitting at Moi Airbase in Court Martial Case No. 4 & 5 of 2023)

JUDGMENT

1. The 1st appellant, Senior Sergeant Samson Machua Kibe, and the 2nd appellant, Senior Sergeant Benard Manthu Muli, were charged before the Court Martial and, after a full trial, convicted of multiple offences under the [Kenya Defence Forces Act](#) and the Penal Code.
2. The 1st appellant was found guilty on three counts of offences: Stealing contrary to section 91(1)(b) of the [Kenya Defence Forces Act](#), and sentenced to five years' imprisonment. Disobedience to standing orders contrary to section 77(1) of the same Act and sentenced to 18 months' imprisonment. On the third count, he was convicted for the offence of damaging property, contrary to section 89(1)(a) as read with section 89(4) of the [Kenya Defence Forces Act](#), and sentenced to 10 years' imprisonment.
3. The 2nd appellant was convicted on seven counts of offences: Stealing under section 91(1)(b) of the [Kenya Defence Forces Act](#), for which he was sentenced to serve five years' imprisonment. He was also convicted of two civil offences contrary to section 133 of the Act that is to say possessing paper intended to resemble bank notes contrary to section 367 of the Penal Code resulting in a one-year sentence; and stealing by a person in public service, contrary to section 280 of the Penal Code, for which he was sentenced to four years. He was further convicted of three counts of conduct prejudicial to good order and discipline contrary to section 121, where he was sentenced to serve four years, one year, and



one year respectively to run concurrently. Lastly, he was convicted of damage to property contrary to section 89(1)(a) as read with section 89(4) of the *Kenya Defence Forces Act*, and sentenced to 10 years' imprisonment.

4. As this is a first appeal, I am required to re-evaluate the evidence tendered in the trial Court and come to an independent conclusion as to whether or not to uphold the convictions and sentences. This task must have regard to the fact that I never saw or heard the witnesses testify (see *Okeno v Republic* [1973] EA 32).
5. The prosecution called 27 witnesses in support of their case. It was their case that on 26th May 2023, PW17, WOI Abdi Mohammed Hillow, confirmed that he participated in the withdrawal of Kshs. 30 million from Equity Bank alongside other officers, including Mutembei. The money was handed over to PW4, Captain JA Oluoch, the Paymaster, who confirmed that Kshs. 2 million was used immediately while Kshs. 28 million was locked in a safe in her office. She later received a call on 29th May informing her of a break-in. When she arrived at the scene, she observed that the office door was not damaged but the safes were broken.
6. PW12, a banking officer, confirmed the cash withdrawal on 26th May by the military officers and stated that the money was released without any issue.
7. PW14, Ssgt Christopher Rotich, was the general duty clerk. He held the main door key and confirmed he was the last to leave the office on 26th May, after locking up. On 29th May, he found no signs of forced entry on the door. He denied giving his key to anyone and said he was not aware that the cash office keys had been passed around.
8. PW23, WOII Munyoki Ndolo, was the cafeteria manager. He testified that on 26th May, Mutembei requested him to collect cash on Sunday for duty officers. He received keys from a civilian named Sammy Mutunga and returned them to Cpl Mwamasi. He clarified that he did not enter the cash office. He was later questioned due to his temporary possession of the keys.
9. PW15, Spte James Bundi Mutembei, stated that he discovered the safes had been broken on 29 May 2023. He had been on duty at the Pay Office over the weekend. On Saturday night, he slept outside the office, returned on Sunday night, and handed the cash office keys to a civilian to deliver to WOII Ndolo. The keys were also handled by Cpl Mwamasi. However, he noted that the main door key was held by Ssgt Rotich. He reported the break-in to the general duty clerk.
10. PW16, WOII Boniface Ouma, the camp's senior man, testified that during his night duty he noticed suspicious entries in the occurrence book. He followed up and found that two vehicles, one belonging to 1st appellant and another to the 2nd appellant, had accessed and exited the camp at odd hours. He also confirmed that the 2nd appellant used a civilian ID and a false car registration number.
11. PW3, Susan Mathenge, stated that her vehicle with registration KDB 469G was parked at her home on the night in question and denied any involvement.
12. PW5, PW22, and PW24, the sentries on duty, confirmed that the 2nd appellant booked in unauthorised visitors using a false identity and incorrect vehicle registration. They recalled one unbooked individual alighting from the car. Later that night, the 1st appellant's vehicle also entered the camp. Both appellants exited around 3:00 am without thorough searches.
13. PW6 and PW27, Cpl Omondi and Cpl Kabure, stated that their military ID cards were used by the 2nd appellant without their knowledge. They told the court that neither of them had gained access to the camp that night.



14. PW1, Col Masiga, confirmed that sensitive recruitment documents were found at the 1st appellant's residence. He further testified that he did not have authority to possess the said documents outside the office.
15. PW2, Anthony Ochieng Malele, a civilian, stated that 2nd appellant borrowed his ID card claiming it was for a tender application. He later received Kshs. 100,000 from him which he returned upon arrest.
16. PW18, Ssgt Peter Nyangoto, who supervised the sentries, admitted there were lapses in procedure. He confirmed that unauthorised persons had entered the camp and that the vehicles belonging to the 1st and 2nd appellants left without proper checks.
17. PW19, Ssgt Fredrick Mosoti, the crime scene investigator, observed no sign of forced entry at the office. He lifted fingerprints and photographed the scene. His conclusion was that keys were likely used to access the office.
18. PW11, the forensic examiner, confirmed that fingerprints lifted from the scene matched those of the 2nd appellant. Other prints were either partial or unmatched. No tools were recovered, reinforcing the theory that access was gained using keys.
19. PW20 and PW21, Ssgt Benard Agutu and Sgt Njoroge, stated that after reviewing CCTV footage, they identified 2nd appellant as a suspect. They traced him using a fake car registration and a civilian's ID. Upon arrest, they recovered Kshs. 5 million from his family home and fake currency from his house. During questioning, the 2nd appellant implicated the 1st appellant.
20. PW13, Cpl Dickson Munai, was part of the arrest team. He stated that initial searches at the 2nd appellant's home revealed fake currency. Following a private conversation between the 2nd appellant and a senior officer, the team proceeded to his rural home and recovered Kshs. 5 million. He recorded the findings in an inventory.
21. PW7, IP John Muthui, stated that he assisted in tracing the 1st appellant's sister, PW8, Loise Wanjiku Kibe, who then directed them to PW9, Winnie Anam Achieng, a friend. Winnie led them to PW10, Mujtaba Ahmad Dar, from whose house Kshs. 3.5 million was recovered.
22. PW8, Loise, turned hostile during testimony. However, PW9, Winnie, stated that she received the money from Loise and passed it to Ahmad. PW10, Ahmad, a Pakistani national, testified that he stored the money in a black bag in his house, and that it was later recovered by police.
23. PW25 and PW26, the investigating officers, compiled witness statements. They concluded the incident was an inside job facilitated by the appellants.
24. In their respective defences, Ssgt Kibe the 1st appellant testified that on 4th July 2023, while at Clarett Lounge, he was approached by Military Police and taken to his house in Donholm, where documents from a 2021 recruitment exercise were recovered. He confirmed they belonged to him and were unrelated to the charges.
25. He stated he was at work on 27th May 2023, left in the morning, returned in the evening to collect his uniform, and exited the camp later that night. He denied involvement in the theft and said his car was checked with no issue. He detailed being blindfolded, tortured, and threatened by officers seeking recovery of alleged stolen money. He was taken to several locations, including his sister's house and her friend's, where money was handed over under pressure. He said he signed a statement without proof reading due to injuries and fear. He admitted knowing the 2nd appellant professionally since 2018.



26. The 2nd appellant Ssgt Muli testified that on 13th May 2023, he was at DHQ CAU waiting for a civilian friend, Caleb, who came with another individual, Ochieng. He admitted booking them into the camp without verifying their ID cards and explained that their vehicle broke down, which led them to spend the money they intended to use for drinks on fuel. He denied knowingly using someone else's identity card.
27. On 27th May 2023, the 2nd appellant met Ochieng in Umoja and later went to DoD, although not on duty. He admitted booking Alvin into the camp using Ochieng's ID card, claiming it was an oversight. He was later arrested, blindfolded, and taken to his parents' home and then Utawala, where a search was conducted. He denied any recovery of money and claimed he was tortured, coerced into signing statements, and treated at a military hospital for injuries sustained.
28. Both denied knowledge of the stolen funds, discredited the prosecution's evidence, and alleged coercion during investigations.
29. The appeal was canvassed by way of written submissions which have been duly considered.
30. In count I, the appellants were jointly charged with the offence of stealing, contrary to section 91(1)(b) of the [Kenya Defence Forces Act](#), which defines stealing as;
 1. A person subject to this act who steals commits an offence and on conviction-
 - (a) if by reason of the person's rank, appointment, or employment or as a result of any lawful command the person, at the time of the commission of the offence, was entrusted with the custody, control, or distribution of the thing stolen, is liable to imprisonment for a term not exceeding fourteen years or to lesser punishment: or
 - (b) is liable to imprisonment for a term not exceeding seven years or to lesser punishment
31. To sustain a conviction under section 91(1)(b), the prosecution must prove that the appellants were subject to the Act, the property stolen was military or government-owned, the property came into the appellants' possession by virtue of their duties, and it was dishonestly appropriated.
32. It is undisputed that both appellants were serving members of the Kenya Defence Forces and thus subject to the Act. The sum stolen was Kshs. 28 million which from the prosecution witness evidence was in military custody, since it was withdrawn from Equity Bank for official purposes and stored in a safe inside the Pay Office.
33. It was the prosecution's evidence that the break-in showed no signs of forced entry, suggesting insider access. Testimony from sentries (PW5, PW22, PW24) and camp logs showed both appellants entered the barracks on the night of the theft. PW16 and PW20 traced vehicle movements to both appellants. The 2nd appellant was seen using a fake car registration and a civilian ID. CCTV and OB entries corroborated their access.
34. Evidence further showed that Kshs. 5 million was recovered from the 2nd appellant's rural home (PW20, PW21), and Kshs. 3.5 million was traced from the 1st appellant's sister through a civilian intermediary to a house where it was stored in a black bag. These funds were not accounted for in any official records. The safes were accessed using keys, and fingerprint evidence placed the 2nd appellant inside the cash office. While direct physical evidence against the 1st appellant was weaker, the recovery of money linked to him, alongside coordinated movement with the 2nd appellant, formed a strong chain of circumstantial evidence. The joint participation in the unauthorised entry, concealment of identity, and recovery of



large unexplained sums justified the court's conclusion that both appellants dishonestly appropriated funds jointly. The elements of the offence were satisfied. The conviction on count I was proper.

35. In count 8, the appellants were jointly charged with the offence of damage to property contrary to section 89(1)(a) as read with 89(4) of the KDF Act. This offence required proof that the appellants unlawfully damaged property belonging to the Kenya Defence Forces.
36. The prosecution's case was that the cash safes were found broken. PW19, the scene investigator, testified that there were no signs of forced entry to the outer door, but the safes had been accessed. The break-in was described as targeted and precise.
37. PW11, the fingerprint expert, confirmed the 2nd appellant's prints were found inside the cash office. The 1st appellant's vehicle also entered and exited the barracks that night. Although no direct evidence placed either man with tools or damaging the safes, the use of keys, unauthorised access, and subsequent concealment of funds point to their involvement in the damage necessary to access the money.
38. The trial court concluded that both appellants acted in concert and participated in the unlawful damaging of military property, satisfying the elements of the offence. Their conviction on count 8 was proper and is upheld.
39. In count 2, the 1st appellant was convicted for the offence of disobedience to Standing Orders contrary to section 77(1) of the KDF Act. The prosecution case was that the 1st appellant was found in possession of classified documents relating to composition of Kenya defence forces recruitment teams in respect to specialist officers Kenya Military Academy, lists and slots and recruits reporting status of 2021, during a search at his rented apartment without authority. The prosecution led evidence that the 1st appellant, a staff sergeant, was a serving member of the Kenya Defence Forces and therefore subject to military discipline and orders.
40. The Standing Orders in question regulated access, custody, and dissemination of classified documents, particularly those involving sensitive operational matters like recruitment, deployment, and troop composition. Witnesses testified that the 1st appellant was not authorised to be in possession of such material. No evidence was presented by the defence to suggest that he had the clearance or mandate to handle recruitment documents, especially outside an official duty station.
41. During a lawful search of the 1st appellant's private residence, the said documents were recovered by military police PW12 and PW14. The items were identified as sensitive and classified, including detailed information on specialist officer recruitment and posting of cadets. The prosecution produced inventory lists signed at the point of seizure, and which were not disputed in cross-examination.
42. There was no plausible explanation given by the appellant as to how or why such material was in his possession. His failure to provide authorisation created a strong inference of wilful disobedience of orders regarding security and confidentiality of military records. On this basis, the court correctly found that the 1st appellant, being bound by Standing Orders concerning classified documents, wilfully disobeyed the same by possessing such material without authority, thus satisfying all elements of the offence under section 77(1). His conviction was therefore proper.



43. In count 3, the 2nd appellant was convicted of a civil offence contrary to section 133 of the *Kenya Defence Forces Act*, that is to say, possessing paper intended to resemble bank notes, contrary to section 367 Penal Code.
44. The prosecution led evidence through PW13, a military police officer, who testified that during a lawful search of the 2nd appellant's residence, several pieces of paper resembling genuine currency notes were recovered. The items were seized, documented, and presented before court as exhibits.
45. In his defence, 2nd appellant denied knowledge or possession of the said items, but no plausible explanation was given as to how such materials came to be found in his house. There was no evidence of planting or improper conduct during the search. The defence raised was general and failed to rebut the presumption of possession. Given the circumstances of recovery, the court found the denial to be unconvincing and lacking credibility. The court is therefore satisfied that the prosecution proved all elements of the offence beyond reasonable doubt. The conviction is therefore proper and is upheld.
46. In counts 4, the 2nd appellant was convicted for committing a civil offence contrary to section 133 of the KDF Act that is to say stealing by a person in public service contrary to section 280 of the Penal Code. The charge related to the theft of two civilian identity cards belonging to Sgt Collins Omondi and Cpl Stephen Kabure between March and May 2023. The prosecution was required to prove that the 2nd appellant was a public officer, that the items in question were entrusted to him by virtue of his office or came into his possession through such office, and that he dishonestly appropriated them.
47. It was not in dispute that the 2nd appellant, a staff sergeant in the Kenya Defence Forces, was a public officer. Testimony by witnesses confirmed that the appellant had access to the location where the ID cards were kept, and that he was deployed at the headquarters during the relevant period. The evidence showed that the cards were taken without authority and were later linked to unauthorised access and transactions. While the cards were not found in the direct possession of the 2nd appellant at the time of arrest, the circumstantial evidence placed him at the scene and in control of the location from which they went missing.
48. His failure to account for their disappearance, coupled with his established access to the restricted area, was sufficient to infer dishonest intent. The trial court found the prosecution had proved its case beyond reasonable doubt, and rightly convicted the 2nd appellant. The conviction is therefore upheld.
49. In counts 5, 6 and 7, the 2nd appellant was convicted of conduct prejudicial to good order and discipline contrary to section 121 of the *Kenya Defence Forces Act*. The prosecution's case, supported by the testimonies PW8, PW10, and PW14, was that on 13th and 27th May 2023, the 2nd appellant conspired to fraudulently facilitate the booking of civilian accomplices into DHQ CAU using stolen national identity cards. These included IDs belonging to serving officers Sgt Collins Omondi and Cpl Stephen Kabure, and, in one instance, a civilian's identity card belonging to Mr Anthony Malele. PW10 and PW14 confirmed the booking entries and the falsified identification, while PW8 corroborated the procedure and anomalies in camp access records.
50. Additionally, PW13 testified to the unauthorised entry of a Nissan Note vehicle affixed with falsified number plates registered to a Subaru Impreza belonging to Miss Susan Wamuyu. The prosecution argued, and the court accepted, that the entry of the individuals and the vehicle



was part of a broader plan to conduct reconnaissance and facilitate theft from the DHQ CAU pay office. The coordination of these events, use of forged documents, and manipulation of access protocols demonstrated a calculated breach of military security and operational rules.

51. By using false identities and unauthorised means to gain access to a secure military facility, the 2nd appellant directly compromised the good order and discipline expected of KDF personnel. The trial court correctly found that the conduct amounted to a violation under section 121 of the KDF Act, and the convictions on these counts were lawful and is hereby upheld.
52. After reviewing the prosecution’s direct and circumstantial evidence, it is clear that both appellants were properly linked to the offences for which they were convicted. The defence raised claims of coercion and questioned how some of the evidence was recovered. However, they did not provide any proof to support their allegations. The prosecution met the legal standard required in each count. Where the appellants were jointly charged, there was enough evidence to show they acted in concert in a planned and coordinated manner. In the individual charges, the evidence pointed specifically to each appellant’s actions, including their conduct, access to restricted areas, and possession of key items.
53. On sentence, the appellants were each sentenced as outlined in paragraph 1 and 2 of this judgement. From the record, the other than the sentences in counts 5, 6 and 7 which were to specifically stated that they were to run concurrently, it was implied that they were to run consecutively. During sentencing, the trial court considered the appellants mitigation and directed that their sentences to run from the date of arrest.
54. The Sentencing Policy Guidelines provide as follows: -
 - “7. 13 – Where the offence emanates from a single transaction the sentences should run concurrently. However, where the offences are committed in the course of multiple transactions and where there are multiple victims the sentences should run consecutively”.
55. The Court of Appeal has defined the phrase ‘same transaction rule’ in the case of Republic –vs- Saidi Nsabuga S/O Juma & Another [1941] EACA and revisited it in Nathan –vs- Republic [1965] EA 777 where the court stated as follows: -
 - “If a series of acts are so connected together by proximity of time, criminality or criminal intent, continuity of action and purpose, or by relation of cause and effect as to constitute one transaction, then the offences constituted by these series of acts are committed in the course of the same transaction.”
56. In the instant case, the charges against the appellants indicate that the offences therein were committed in one transaction with the intention to steal from the KDF. The acts were connected by the proximity of time, criminal intent, by the relation of cause and effect, constituting the same transaction. In my view, the trial court ought to have ordered the sentences in all the counts to run concurrently. The trial court indeed acted on wrong principles in that regard.
57. The upshot of the above analysis is that the appeal on sentence partially succeeds.
58. The sentences imposed against the 1st appellant Samson Machua Kibe in Counts I,II, and VIII shall run concurrently from 4th June 2023 pursuant to section 333(2) of the Criminal Procedure Code.



59. The sentence imposed against the 2nd appellant Benard Manthu Muli in Counts I, III, IV, V,VI,VII, and VIII shall run concurrently from 3rd June 2023 pursuant to section 333(2) of the Criminal Procedure Code.

It is so ordered.

JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 25TH DAY OF SEPTEMBER 2025

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D. KAVEDZA

JUDGE

