



**Mwangangi v Republic (Criminal Appeal E046 of 2022)
[2024] KEHC 14 (KLR) (12 January 2024) (Judgment)**

Neutral citation: [2024] KEHC 14 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
CRIMINAL APPEAL E046 OF 2022
GMA DULU, J
JANUARY 12, 2024**

BETWEEN

MUNYAO MWANGANGI APPELLANT

AND

REPUBLIC RESPONDENT

(From conviction and sentence in Criminal Case No. 348 of 2021 at Kilungu Law Court delivered on 17th August 2021 by Hon. C. A. Mayamba (PM))

JUDGMENT

1. The appellant was tried and convicted of robbery with violence contrary with Section 295 and read with Section 296(2) of the [Penal Code](#). He was sentenced to 10 years imprisonment.
2. Dissatisfied with the conviction and sentence, he has come to this court on appeal, and relied on the following grounds:-
 1. The charge sheet was defective.
 2. The circumstances for identification were not conducive.
 3. There was no identification parade conducted to identify the offender.
 4. The recovered items never linked the offence to the offence charged.
 5. The investigation was shoddy thus it could not be relied on.
 6. The case was not proved beyond reasonable doubt.
 7. The defence tendered was (not) considered.



3. The appeal was canvassed through written submissions. In this regard, I have perused and considered the submissions filed by the appellant and the submissions filed by the Director of Public Prosecutions. Both sides relied upon decided court cases.
4. This being a first appeal, I have a duty to examine the evidence on record afresh, and come to my own conclusions and inferences – see *Okeno =Versus= Republic* (1972) EA 32.
5. In proving their case, the prosecution called five (5) witnesses. On his part, the appellant tendered sworn defence testimony, and did not call any additional witnesses.
6. The definition of the offence of robbery with violence is statutory, under Section 295 and 296(2) of the *Penal Code*. The elements are that the offender is either armed with a dangerous weapon; or the offender is in company with one or more other person or persons; or at or immediately before or immediately after the time of the robbery, the offender wounds, beats, strikes or uses other personal violence to any person – see *Jackson Oluoch =Versus= Republic* (1984) eKLR.
7. Though the appellant contends that the charge was defective, I see no defect in the charge. I dismiss that ground.
8. In the present case, the prosecution from the evidence of PW1 Agnes Koli the complainant, PW2 and PW3 established that PW1 was attacked at night, knocked down and was found struggling with somebody else. PW1 was also stabbed with a knife and the attacker was struggling to take the purse of PW1.
9. In my view, since there is no evidence on record that the attacker at any time managed to take possession of the purse of PW1, what the prosecution stated in evidence established attempted robbery, and not full robbery.
10. That said, the appellant’s main complaint was that he was not positively identified as the robber. In my view from the evidence of PW1, PW2 Benjamin Koli Maulu who restrained the appellant, and PW3 George Ngamwa Mwanga who came to the scene attracted by screams and found the appellant already restrained there, the prosecution proved beyond reasonable doubt that the appellant was the culprit.
11. I note that the appellant in cross-examination suggested that he was a lover of PW1, and in his defence said that he went to the scene attracted by screams. That contradictory line of defence of the appellant, in my view means that the defence was a lie and merely meant to divert attention.
12. From the evidence on record, I find that the prosecution proved beyond reasonable doubt that the appellant committed attempted robbery with violence. I will thus substitute a conviction for attempted robbery with violence, contrary to Section 297 of the *Penal Code*.
13. As for the sentence, for the reason that PW1 was injured with a knife, in my view a sentence of 7 years imprisonment is reasonable. I will thus sentence the appellant to 7 years imprisonment.
14. Consequently, I substitute the conviction with a conviction of attempted robbery with violence contrary to Section 297 of the *Penal Code*. I sentence the appellant to 7 years imprisonment from the date he was sentenced by the trial court. Right of appeal explained.

DATED, SIGNED AND DELIVERED THIS 12TH DAY OF JANUARY 2024 AT VOI VIRTUALLY.

GEORGE DULU

JUDGE

In the presence of:-



Ms. Nusura – Court Assistant

Appellant

Ms. Omollo for State

