



**Kimnetich & another v Republic (Criminal Appeal E010 of 2022)
[2024] KEHC 9083 (KLR) (24 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 9083 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KILGORIS
CRIMINAL APPEAL E010 OF 2022
F GIKONYO, J
JULY 24, 2024**

BETWEEN

WESLEY KIMNGETICH 1ST APPELLANT

PAUL KIPROTICH RONO 2ND APPELLANT

AND

REPUBLIC RESPONDENT

*(From the conviction and sentence of Hon. M.I.G Moranga (S.P.M)
in Kilgoris SPMCR No. 708 of 2020 delivered on 31.08.2022)*

JUDGMENT

1. The appellant is challenging his conviction and sentence to 30 years imprisonment for the offence of robbery with violence, section 296 (2) of the [Penal Code](#).
2. He cited the following grounds of appeal;
 - i. The IO testified that the incident took place at a place we were drinking changaa while the complainant testified that he was attacked on his way home.
 - ii. No stolen items or weapon used was recovered from us.
 - iii. The light from the phone could not be relied as sufficient light for proper identification at night,9 pm.

Directions of the court.

3. The appeal was canvassed by way of written submissions.



Appellant's submissions.

4. The appellant submitted that the prosecution did not prove its case beyond reasonable doubt. The appellant relied on *Rep v Silas Magongo*(2017) eKLR, *Joo v Rep*(2015)eKLR, *Hassan Abdallah Mohammed v Republic* [2017] eKLR, *Wamunga v Republic* (1989) KLR 424 And 426, *Robia v Republic*(1967)EA 583, *Abdalla Bin Endo & Another v R* (1954)EACA 187, *R V Baskervill* [1916] 2 KBC 58, *David Ojeabuo v Federal Republic of Nigeria* [2014]LPELR 22555(Ca), *Okethi And Others Verses Republic* [1965) EA 555
5. The appellant submitted that it was improper for the trial court to hold that the prosecution had proved their case beyond reasonable doubt.
6. The appellant submitted that none of the witnesses during trial tendered any evidence capable of incriminating them or placing them at the scene of the crime.

The respondent's submissions.

7. The respondent submitted that from all that evidence the appellants were well known to the complainant enough to identify them by recognition on the date of the robbery.
8. The respondent submitted that although the offence occurred at night at about 9 pm, the totality of the circumstances favored a proper and reliable positive recognition

Analysis and Determination.

Court's duty

9. First appellate court is obligated to re-evaluate the evidence and make its own conclusions, except, bearing it did not have the advantage of hearing and observing the demeanor of the witnesses. See *Okeno v. Republic* [1972] EA 32
10. The court has considered the grounds of appeal, the evidence adduced in the lower court, and the respective parties' submissions. The broad issues for determination are;
 - i. Whether the prosecution proved its case beyond a reasonable doubt.
 - ii. Whether the sentence was manifestly harsh and excessive

Elements of the offence of robbery with violence

11. The appellant was charged with the offence of robbery with violence contrary to Sections 296(2) of the *Penal Code*.
12. The offence of robbery with violence is committed when a person steals anything capable of being stolen and the offender is; armed with any dangerous or offensive weapon or instrument; or is in the company of one or more other person or persons; or at or immediately before or immediately after the time of the robbery, wounds, beats, strikes or uses any other personal violence to any person.
13. (See *Olouch v Republic* (1985) KLR)
14. The complainant PWI in his testimony during the examination in chief testified that he knew the accused persons very well as they had been neighbors since 1994 when he was born. This fact was not shaken in cross-examination; he gave a clear description of their homesteads and location. He added that he knew the 1st appellant as a person who likes to engage in fights in the village and takes a lot of



- alcohol. He also added that he knows that the appellant had been convicted twice in court, of gambling and another offence. In cross-examination by the second appellant, the complainant stated that he knew the second appellant as a turnboy of a tractor.
15. The complainant says that he was attacked at about 9 pm by the appellants while walking back home. He had a torch. He beamed the torchlight upon the appellants as the appellants walked by him and he saw them. He recognized them and did tell the good Samaritan who saved him, the appellants are the ones who attacked him. Appellants also took a long while with the complainant during the attack and even had conversations together.
 16. The evidence by the complainant was that the 1st appellant pulled out his pocket and took away money totaling to Kshs 25,000/=, his phone, make Techno, black in color, sugar, vegetables, tomatoes, and meat worth Kshs 150/= before he was rescued. From his testimony in examination in chief, he stated that the 2nd appellant was with him at a shop before the incident where the complainant had removed all his money from his pocket to retrieve Kshs 2,000/= to pay for the shopping. Thus, the 2nd appellant knew that the complainant was walking with a bundle of cash in his pocket.
 17. During the time of stealing, the complainant explains that the 1st appellant stabbed him and he fell. He (1st appellant) then pushed him (complainant) to the ground. The complainant was also beaten on the head with a rungu. During the ordeal the 2nd appellant was holding his neck. The violence and injuring him was to enable them to take away and disappear with his money.
 18. The prosecution produced treatment notes and a medical examination report (P3), which showed that the complainant suffered a stab wound and head injury.
 19. The clinical officer PW3 confirmed the complainant sustained extensive injuries on his body and highlighted the extent of those injuries. PW3 who was the good Samaritan who rescued the complainant on the material date confirmed that he met the complainant on the road and he was bleeding. He enquired what had happened and the complainant informed him that he had been robbed by the accused persons. He escorted the complainant to a hospital at Chebuyo Center and called the complainant's relatives. PW 3 then left the complainant in the hospital, where the complainant was admitted for treatment for 30 days.
 20. The 1st appellant stated that he may have been framed by a third party, one Mr. Rono, with whom he alleged to have had a land dispute but offered no proof. Both appellants feigned ignorance and claimed that they did not know the complainant. They offered no alibi.
 21. The evidence by the prosecution proved beyond reasonable doubt that; the appellants; were in company on each other; were armed with dangerous weapons; maasai sword and rungu; stabbed him and hit him of the head, causing him serious bodily injuries; and stole his money and property. The offence of robbery with violence was accordingly proved.
 22. The court, therefore, finds that the appellant was properly convicted on evidence that proved the case against him beyond reasonable doubt.
 23. In the upshot, the appeal on conviction is dismissed.

On sentence.

24. The offence and the circumstances the offence occurred and the manner it was committed call for a deterrent sentence. The appellants grievously injured the complainant during the robbery through stab wounds on the belly, blunt force trauma on the head, and strangulation. They left him for dead. Luckily, the complainant was rescued by the good Samaritan who was God-sent with a motorcycle.



The offence was gruesome and heartless executed in ruffian style of 'show no mercy. Such acts deserve deterrent sentence even death.

25. The maximum sentence for the offence of robbery with violence is death. The appellants were lucky they did not receive death penalty. There is therefore, no reason or justification to reduce the sentence imposed upon the appellants.
26. The upshot of this analysis is that the appeal lacks merit and is hereby dismissed. It is so ordered.

**DATED, SIGNED, AND DELIVERED AT KILGORIS THROUGH MICROSOFT TEAMS
ONLINE APPLICATION THIS 24TH DAY OF JULY, 2024.**

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HON. F. GIKONYO M.

JUDGE

In the presence of:

C/A – Mr. Leken

Mr. Okeyo for DPP - Present

1st Appellant & 2nd Appellant - Present

