



**Letikirich v Republic (Criminal Appeal 64 of 2023)  
[2024] KEHC 12226 (KLR) (15 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 12226 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
CRIMINAL APPEAL 64 OF 2023  
DR KAVEDZA, J  
OCTOBER 15, 2024**

**BETWEEN**

**FRANCIS SARIO LETIKIRICH ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal against the original conviction and sentence delivered by  
Hon. Mutuku (SRM) on 8th March 2019 at Kibera Chief Magistrate's Court  
Criminal Case no. MCCR 876 of 2014 Republic vs Francis Sario Letikirich)*

**JUDGMENT**

1. The appellant was charged and after a full trial convicted for the offence of robbery with violence contrary to section 295 as read with 296(2) of the *Penal Code*. The particulars were that on the 3<sup>rd</sup> day of March, 2014, along Argwings Kodhek Road in Kilimani within Nairobi County, the appellant jointly with another not before this court, robbed Sheila Mwenje of cash Kshs. 227,000 while armed with a pistol and immediately after the robbery threatened to use violence against the aforementioned complainant. He was sentenced to 25 years imprisonment.
2. Being aggrieved, he filed the present appeal challenging his conviction and sentence. In his appeal, the appellant challenged the totality of the prosecution's evidence against which he was convicted.
3. This being a first appeal, it is the duty of this court as the first appellate court, to reconsider, re-evaluate, and re-analyse the evidence afresh and come to its own conclusion on that evidence. The court should however bear in mind that it did not see witnesses testify and give due consideration for that. (See *Okeno v Republic* [1972] EA 32).
4. The prosecution called seven (7) witnesses in support of their case. PW1, Sheila Mwenje in her sworn statement stated that on the day of the incident, she was heading to Chase Bank to deposit Kshs. 227,000 on behalf of her employer, when she came across two men. One of them, the appellant, grabbed



her from behind while the other was armed with a pistol. Consequently, she began screaming, which caught the attention of a passer-by who hit the appellant with a stone, causing him to fall to the ground. The other man who was armed ran off with a motorcycle and part of the money. A mob gathered and proceeded to beat the appellant up. Promptly, PW1 proceeded to deposit Kshs. 170,000 that she had remained with, and thereafter recorded a statement with the police.

5. PW2 who was PW1's employer narrated that on March 3, 2014, she was alarmed by the fact that there was a discrepancy in the amount deposited at the bank, which was a lesser amount than what she had given PW1. Right then a Police Officer called her and broke the news of the robbery to her, after which she was told to proceed to Silver Springs Hotel, where she found the appellant, PW1, and the man who assisted PW1 during the attack.
6. PW3, PC Daniel Kiprop Chebii, recounted that while he was on patrol at Silver Spring Hotel together with a colleague, he heard screams at the gate of the hotel, which prompted him to rush there, where he found the complainant who proceeded to inform him of what had happened. He recalls that the accused was also present at the scene, and had been beaten up by a mob. PW3 corroborated the witness statement of PW1. Thereafter, he proceeded to call for assistance from Kilimani Police Station.
7. PW4 averred that as he was driving towards Nairobi Hospital, he heard the complainant screaming "thief, thief" and saw her being tackled by two men. His testimony was in line with that of PW1, PW2, and PW3, and was able to identify the complainant.
8. PW5, PC Dancun Monari, was the colleague of PW3 who was on patrol with him at Silver Spring Hotel. He echoed the testimony of PW3, adding that they recorded their statements that very day.
9. The investigating officer PC Joseph Kimanzi, herein PW6, stated that PW3 and PW5 brought in the appellant after being arrested. PW6 proceeded to interrogate him, and when he was convinced that he had committed the offence, he charged the appellant. The second suspect managed to escape using a motorcycle whose registration number was never captured.
10. PW7, PC Andrew Maina took over the file from PW6 when he was transferred from Kilimani Police Station, and gave his statement at that time. Nonetheless, he stated that he did not conduct any further investigations since his predecessor on the matter had completed it all.
11. The appellant testified that on March 3, 2014, he was walking along Argwings Kodhek Road towards Nairobi Hospital to visit his mother, accompanied by his neighbour, James. During the walk, he observed a man tackling the complainant. The appellant alleged that the assailant, upon noticing him, pushed the complainant to the ground. When the appellant attempted to assist her, a passer-by struck him on the head.
12. The appellant further claimed that he was arrested by police officers shortly thereafter.
13. The appeal was canvassed by way of written submissions by the appellant which have been duly considered. The appellant was convicted of the offence of robbery with violence. The key ingredients for a robbery with violence charge are found in section 296(2) of the [\*Penal Code\*](#). It provides as follows-

"if the offender is armed with any dangerous or offensive weapon or instrument, or is in company with one or more other person or persons, or if, at or immediately before or immediately after the time of the robbery, he wounds, beats, strikes or uses any other personal violence to any person, he shall be sentenced to death".
14. PW1 testified that the appellant grabbed her from behind while his accomplice, armed with a pistol, stole part of the Kshs. 227,000 she was carrying. PW2 the employer of PW1 confirmed that there was a



discrepancy between the amount PW1 deposited and the initial sum given, which was consistent with PW1's claim that some money was stolen. PW4 testified that he witnessed PW1 being attacked by two men, further supporting PW1's account of the attack. PW3 and PW5 responded to PW1's screams at the Silver Springs Hotel gate, where they found the appellant subdued by a mob. This aligns with PW1's account of the attacker being struck by a passer-by and then captured by bystanders.

15. PW1 recorded her statement immediately after the incident, confirming the sequence of events. PW6 the investigating officer, confirmed that the appellant was brought in by PW3 and PW5, adding that the police inquiry corroborated the details of PW1's testimony. PW6 also confirmed that the second suspect escaped on a motorcycle.
16. PW2's discovery of the shortfall in deposited money (Kshs. 170,000 deposited out of Kshs. 227,000) confirmed the financial loss reported by PW1. This combination of witness testimonies, the apprehension of the appellant at the scene, and the confirmed discrepancy in deposited funds corroborate the evidence to establish the occurrence of the robbery with violence and the involvement of the appellant as the assailant.
17. I have also considered the defence put forward by the appellant and hold that it did not displace the otherwise strong culpatory evidence adduced by the prosecution. I hold that the prosecution proved its case to the required standard of proof on the charge of robbery with violence against the appellant beyond reasonable doubt. The conviction by the trial court is affirmed.
18. On sentence, the trial court sentenced each of the appellants to twenty-five years imprisonment. During sentencing, the trial court considered the mitigation and that he was a first offender. Although the trial court indicated that the said period had been considered, the court was not specific on what amount of time was considered. Guided by the law, the court is of the view that the period ought to be specifically noted, as failure to do so would amount to denying the applicant a right due to the failure of the court to discharge an obligation bestowed upon it by law (See *Ahmed Abolfathi Mohamed v Republic* [2018] eKLR)
19. The upshot of the above is that the appeal is found to be lacking in merit and is dismissed. However, the sentence of twenty years imprisonment imposed by the trial court shall run from 3<sup>rd</sup> March 2014 the date of the appellant's arrest pursuant to section 333(2) of the [Criminal Procedure Code](#), Cap 75 Laws of Kenya.

Orders accordingly.

**JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 15<sup>TH</sup> DAY OF OCTOBER 2024**

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**D. KAVEDZA**

**JUDGE**

In the presence of:

Appellant present

Maroro for the Respondent

Achode Court Assistant

