



REPUBLIC OF KENYA



**Sorongai v Republic (Criminal Appeal E028 of 2023)  
[2024] KEHC 13732 (KLR) (6 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 13732 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KILGORIS  
CRIMINAL APPEAL E028 OF 2023  
F GIKONYO, J  
NOVEMBER 6, 2024**

**BETWEEN**

**ISMAEL LESHAN SORONGAI ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(From the conviction and sentence of Hon. M.I.G.Moranga  
(S.P.M) in Kilgoris CMCR No. E982 of 2021 on 23.10.2023)*

**JUDGMENT**

**Identification by single witness**

1. The appeal is challenging appellant's conviction and sentenced to 25 years imprisonment for the offence of robbery with violence.
2. The undated petition of appeal filed on 10/11/2023 cited the following grounds of appeal: -
  - i. The learned magistrate erred in law and fact by convicting the appellant on uncorroborated evidence by the prosecution witness.
  - ii. The learned magistrate erred in law and fact by rejecting his plausible defense without any further explanation on it.
  - iii. The learned magistrate erred in law and fact by failing to analyze that the entire evidence was manufactured, manipulated, and framed to meet the predetermined goal of fixing the appellant.



### **Brief facts**

3. The appellant was charged with the offence of robbery with violence contrary to section 296(2) of the Penal Code.
4. the particulars were that on 22/10/2023 at the Poroko location in Transmara West sub-county within narok county jointly with others not before court robbed Robert Ndalamiya Shan of Kshs. 16,000 and at the time of such robbery wounded the said Robert Ndalamiya Shan.
5. The appellant was tried, convicted, and sentenced to 25 years imprisonment.

### **Directions of the court.**

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

### **The Appellant's submissions.**

7. The appellant argued that the complainant did not disclose the intensity of the light. The appellant relied on Charles Olinda Maitany Vs Republic, Ndarugu Vs Republic [2016] Cr. Appeal No. 76 of 2012.
8. The appellant further submitted that the evidence of PW1 and PW2 was contradictory. The appellant relied on Rihard Aspella Vs Rep. App No. 45 of 1981 CA.
9. According to the appellant, there was no medical report from another facility yet the complainant was brought to the facility of PW5 after 6 days. The appellant relied on Maina Thiongo V Republic High Court At Nyeri Criminal Appeal No. 83 Of 2015, Samson Matoke Machoka V R Court Of Appeal At Kisumu Criminal Appeal No. 291 Of 2012, Mutonyi V R Court Of Appeal At Nairobi Criminal Appeal No. 92 Of 1981; [1983] Klr, John Waweru Njoka V R Court Of Appeal At Nyeri Criminal No. 115[2005] Klr 175, Bare Mohamed V R(High Court At Garissa Criminal Appeal No. 106 Of 2014, George Ngondhe Juma And Others V Attorney General High Court At Nairobi Misc. Criminal Application No. 345 Of 2001.
10. The appellant blamed the police for conducting shoddy investigations. in support thereof, the appellant cited JOO V Rep [2015] eKLR.

### **The respondent's submissions.**

11. The respondent submitted that the appellant with one Lekakeny Majani stole from the complainant. The respondent relied on the evidence of PW1.
12. The respondent submitted that the appellant together with his accomplice used force on the complainant. They hit him on the middle of his forehead and face, causing him to fall down and left him vomiting blood. The respondent relied on the evidence of PW1, PW3, and PW5.
13. The respondent submitted that the complainant knew the appellant well and the torch used to illuminate and identify the appellant and his accomplices was bright enough to identify them... The respondent relied on Anjononi And Others V Republic [1980] KLR quoted in Daniel Muthomi Marigu & 4 Others Vs Republic [2021] eKLR, Turn Bull & Others [1976] 3 ALL ER 549 quoted in Mbaya Githinji V Republic [2019] eKLR, evidence of PW1 and PW3



## **Analysis and Determination.**

### **Court's duty**

14. First appellate court is obligated to re-evaluate the evidence and make its own conclusions bearing in mind that the trial court had the advantage of hearing and observing the demeanor of the witnesses. See *Okeno vs. Republic* [1972] E.A 32
15. 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 robbery with violence**

16. 'Robbery with violence is committed in any of the following circumstances: a) The offender is armed with any dangerous and offensive weapon or instrument; or b) The offender is in company with one or more person or persons; or c) 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 .....'. *Oluoch Vs. Republic* [1985] KLR:
17. The three elements of the offence of robbery with violence under section 296(2) of the Penal Code are, to be read disjunctively and not conjunctively. Proof of one element beyond reasonable doubt founds a conviction for the offence of robbery with violence. *Dima Denge Dima & Others vs Republic*, Criminal Appeal No. 300 of 2007.
18. PW1 testified that on 22/10/2021 he had closed his businesses and was on his way home when he was attacked by the appellant and others. With the use of his mobile phone, he was able to identify them. They frisked him and stole Kshs. 60,000 that he had in his wallet including his NHIF card, ID card, and KCB ATM card. They injured him and left him for dead.
19. At around 1:30 A.M., he regained consciousness and crawled home. His wife raised an alarm when he saw the complainant. He was rushed to Kilgoris Sub County Hospital and admitted. Later he was transferred to Tenwek Hospital for a CT scan.
20. PW1 denied having any land disputes with the appellant's family.
21. PW2 testified that on 28/10/2021 at 18: 27 hours together with other officers from Kilgoris police station, they conducted a manhunt for the appellant. They arrested the appellant with Dennis Kononkai Lemiso and Johana Kononkai.
22. Pw3 testified that on the night of 22<sup>nd</sup> and 23<sup>rd</sup> October 2021 at around 1 a.m., he heard screaming from the complainant's home. He rushed and found him lying outside his house injured on the forehead near the eyes in the middle of the head and bleeding profusely. He stated that the complainant mentioned the appellant, Saningo, and Lekakeny as his attackers who had robbed him.
23. PW3 stated that the complainant was rushed to the hospital where his wounds were dressed and referred to Tenwek.
24. PW4 testified that on 28/10/2021 he was part of the team that arrested the appellant. He noted that the complainant was injured on the left eye and head.



25. PW5 a clinical officer from Transmara sub-county hospital produced copies of the P3 form for PW1. She stated that upon examining the complainant she noted he had multiple cut wounds on the scalp and left eye anterior parietal lobe as well as the posterior parietal lobe. He also had redness of the eye. She formed the opinion that both sharp and blunt objects were used to inflict injury and classified his injuries as 'harm'. She produced the P3 form dated 28/10/2021 as P Exh 1. She did not rule out that the complainant was treated elsewhere.
26. DW1 testified that he was arrested on 28/10/2021. He stated that on 21/09/2021 he was hit by a police vehicle. He filed the report at Kilgoris police station on 3/10/2021. He produced an x-ray taken to show his three fingers were broken and a swell in his right shoulder. His toe fingers were broken too. He produced photographs D Exh 3 A-E and x-rays taken as D Exh 2. He denied robbing PW1 as at the time he was nursing injuries from the accident. He termed the charges as framed up. He was arrested while undergoing treatment at Dr. Musyoka. He claimed that on 22/10/2021 he was at home.
27. On cross-examination, he stated that the documents had a signature but no name of the doctor. The photographs did not have a date imprinted but the name of his brother Lawrence Ledama after he used his NHIF card. He claimed pw4 was using pw1 to cover up the offence against him.
28. DW2 the mother of the appellant testified that her son was hit by a vehicle. She stated that her son could hardly walk and had to be carried. As the appellant healed he was arrested. She attended to the appellant's wounds as he healed at home.
29. DW3 testified that they took care of the appellant at home. He reiterated dw2 testimony on the injuries sustained by the appellant. He stated that the appellant was arrested while undergoing treatment.
30. Based on the evidence of PW1, and PW3 who distinctly gave a recollection of what unfolded on the material night, it is clear that PW1 was attacked leading to grievous injury, and in the process robbed of his money.
31. The mega question is whether he was robbed by the appellant. The complainant was the only identifying witness and identification was done at night. A combination of these two elements heightens the court's scrutiny of the circumstances of identification which were difficult, to avoid the possibility of error or mistaken identity.
32. See the Court of Appeal for Eastern Africa in ABDALLA WENDO vs. R<sup>1</sup> on these circumstances when it held that: -

“Subject to certain exceptions, it is trite law that a fact may be proved by the testimony of a single witness but this does not lessen the need for testing with the greatest care the evidence of a single witness respecting identification, especially when it is known that the conditions favouring a correct identification, were difficult. In such circumstances what is needed is other evidence whether it be circumstantial or / direct, pointing to guilt, from which a judge or jury can reasonably conclude that the evidence of identification, although based on the testimony of a single witness, can safely be accepted as free from the possibility of error.”

33. See also Roria vs. Republic<sup>2</sup>, the Court of Appeal for East Africa held that:-

“A conviction resting entirely on identity invariably causes a degree of uneasiness, .....

<sup>1</sup> [1953] 20 E.A.C.A 166

<sup>2</sup> [1967] EA 573



That danger is of course greater when the evidence against an accused person is identification by one witness and although no one would suggest that a conviction based on such identification should never be upheld. It is the duty of this court to satisfy itself that in all the circumstances it is safe to act on such identification.”

34. The complainant testified that he knew the Appellant and the other attackers before the incident as he was their neighbor and that he was able to see the attackers using his mobile phone torch. He was categorical that he was able to see the attackers under the light.
35. Pw3 testified that on the night of 22<sup>nd</sup> and 23<sup>rd</sup> October 2021 at around 1 a.m., he heard screaming from the complainant’s home. He rushed and found him lying outside his house injured on the forehead near the eyes in the middle of the head and bleeding profusely. He stated that the complainant mentioned the appellant, Saningo, and Lekakeny as his attackers who had robbed him.
36. The evidence by PW3 corroborates the evidence by PW1 in material respect; identity of the person who attacked PW1 and robbed him on the material day.
37. Nothing shows that the testimony of PW1 was not reliable or was manufactured or aimed at setting up the appellant as he alleged. His evidence was direct evidence of visual identification of the Appellant.
38. Therefore, the overall impression of the evidence is that the prosecution proved beyond reasonable doubt that the appellant jointly with others not before the court robbed the complainant of his property, and during the robbery, they used actual violence on the complainant as a result of which they wounded him.
39. Accordingly, the appeal on conviction fails and is dismissed.

#### **Sentence**

40. The Penal Code prescribes the death sentence as the maximum sentence for the offence of robbery with violence. The trial court was alive to the fact that it had, and exercised discretion in sentencing the appellant to 20 years imprisonment. Given the manner the offence was committed, the nature of the offence, the amount of force applied and the injuries inflicted, and the weapons used, justify a sentence of 20 years’ imprisonment imposed; it was appropriate. Accordingly, there is no reason or justification to interfere with the sentence meted upon the Appellant by the trial court.
41. In the upshot, the appeal on conviction and sentence is dismissed for lack of merit. The sentence is upheld.

#### **Conclusion and orders**

42. The appeal on conviction and sentence is dismissed.
43. It is so ordered.

**DATED, SIGNED, AND DELIVERED AT KILGORIS THROUGH MICROSOFT TEAMS ONLINE APPLICATION THIS 6<sup>TH</sup> DAY OF NOVEMBER, 2024.**

.....

**F. GIKONYO M.**

**JUDGE**

In the Presence of:



1. Court Administrator – Mr. Nyangaresi
2. Mr. Okeyo for DPP – present
3. Appellant - present

