



REPUBLIC OF KENYA



KENYA LAW
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**Idaya & another v Republic (Criminal Appeal E037 of 2024)
[2025] KEHC 14092 (KLR) (24 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 14092 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT LODWAR
CRIMINAL APPEAL E037 OF 2024
PJO OTIENO, J
SEPTEMBER 24, 2025**

BETWEEN

SAMSON IPUNDO IDAYA 1ST APPELLANT

JOHN EWAAR ABRAHAM 2ND APPELLANT

AND

REPUBLIC RESPONDENT

JUDGMENT

Background

1. The Appellants were both charged with two counts each for robbery with violence contrary to Section 296(2) of the Penal Code and handling suspected stolen property contrary to Section 322(2) of the Penal Code. Particulars of the offence of robbery with violence were that the Appellants on the 7th day of December 2023 at around 2300 hours at Kakuma town in Turkana West Sub County within Turkana County, jointly with others not before court robbed Kelvin Tarus Tangasha and Ewesit Lokolia Achii respectively; of mobile phones Samsung A22 valued at Kshs.16,000 and cash Kshs.13,000 and Tecno Camon16 valued at 19,000; and that at the time of such robbery used actual violence to the said Kelvin Tarus Tangasha.
2. Both appellants faced alternative charges. The 1st Appellant was charged with handling suspected stolen property with the particulars that on 8th day of December 2023 at around 2300 hours at Kakuma town in Turkana West Subcounty within Turkana County, otherwise that in the cause of stealing dishonesty retained one mobile phone make Samsung A22 valued at Kshs. 16, 000 the property of the said Kelvin Tarus Tangasha.
3. The second Appellant faced the alternative charge of handling suspected stolen property whose particulars were that on 8th day of December 2023 at around 2300 hours at Kakuma town in Turkana West Subcounty within Turkana County, otherwise that in the cause of stealing dishonesty retained



one mobile phone make Tecno Cammon 16 valued at Kshs. 19,000 the property of the said Ewesit Lokolia Achii.

4. At the trial, the prosecution called seven (7) witnesses while the appellants gave own testimonies in their defence.

Summary of the Prosecution Case

5. Evidence by PWI, Kevin Tarus, a boda boda operator, was that on 8/12/2023 at around 0030 hours, he was coming from Kakuma town headed towards Lopwarin carrying a customer. His motorcycle ran out of fuel near Arid Zone School and he started to push it towards the nearby PCEA church. While pushing, he saw someone armed with a club closely following. The person hit the motorcycle at the back and ordered him to stop. When he stopped, some 3 other people joined and that one of them held him by the neck as others ransacked his pockets.
6. It was his testimony that he saw the persons who got hold of his neck started to cut him with a knife from the back and front before the gang took away his mobile phone make Samsung A22 together with Kshs.13, 000 that were all in his pocket. He was then ordered to key in his passwords including for the Mpesa pin which he did before they delete his applications.
7. He indicated that the gang then took away his jacket and also ordered him to remove his shoes. He affirmed to have been able to see them clearly and was able to identify both the Appellants. He stated that he had seen them prior to the incident and as they left, he continued to push his motorcycle towards Kakuma town. On his way he found other motorcyclists and informed them of the incident before reporting to Kakuma police station. He thereafter headed to Kakuma Mission Hospital where he was treated and returned to Kakuma town upon which he was informed that another KPR officer had also just been robbed around the same place of his incident. He testified that after a short while, he spotted one of the attackers who on seeing him, ran away headed to a house under a booster which turned out to be the hideout.
8. The witness and a colleagues proceeded to the house and found the two Appellants standing outside the house while armed with clubs. On searching, they found another person hiding under the bed. They also searched the 2nd Appellant and found him in possession of his mobile phone which had just been stolen. He confirmed the 1st Appellant having been at the scene. He added that the team also found another phone on the 2nd Appellant which was identified by the NPR officer to belong to him. They then arrested the Appellants and reported to the police.
9. The witness identified the blue-handled knife as that pointed against his neck and which was owned by the 2nd Appellant. He then recorded his statement the following day and was issued with a P3 form which was filled at the hospital. He stated that he was later summoned for an identification parade consisting of 10 people where he was able to pick the two Appellants. He also identified his mobile phone Samsung A22 which had been recovered from the 2nd Appellant as well as the blue-handled knife which was recovered in possession of the 2nd Appellant. He further indicated that the 2nd Appellant was also found with another mobile phone Tecno and which was identified by the NPR officer as his. He affirmed that it was the 2nd accused who knocked on his motorcycle with a club.
10. Upon being cross-examined, the witness told the court that the incident occurred at around midnight, that he had Kshs 13,000 he had collected from chama and that he was able to identify the two well. He also confirmed having attended the identification parade, that his mobile form was stolen and that he was the first to reach the house where arrest was effected before the NPR officers arrived.



11. Evidence by PW2, Peter Ewesit Lobor, the NPR officer, was that on 8/12/2023 at around midnight he was with Peter Nakolea who had left him to go and buy airtime only to come back and report to him that he had been beaten along the road near the chief's junction by a group of boys who were armed with a knife who snatched his mobile phone before running away. He reported the issue to the police station and was issued with a P3 form.
12. The witness added that after reporting to the police station, him in the company of the corporal and 4 other NPR colleagues left to Yemen village to search for the thieves and the stolen items. They found a mud house wherein there were 4 people. Two of the four people managed to escape but they arrested the 2 Appellants. It was his testimony that the 2nd Appellant had 2 mobile phones and a knife, one of the phones recovered being of make Tecno and was later identified to belong to the robbed NPR officer. He added that there were street lights on at the place of arrest which enabled them to identify the Appellants well.
13. Upon cross-examination, the witness told the court that the appellants were well known to then because they had been arrested and handed over to the police but got set free.
14. Ewesit Lokolia, PW3, testified that on 8/12/2023 at around 0010 hours, he had been sent by his boss to buy him airtime and had met his colleague Peter Ewesiit in Kakuma town. He stated that after he had bought the airtime and was on his way back, four people surrounded him with, one of the four them beat him on the shoulder while other two held him tightly at the waist. He indicated that the attacker at the front with a club removed a knife while another who had been standing at his right side inserted his hand into his pocket taking away his mobile phone together with the airtime he had bought.
15. It was his testimony that he managed to escape from the attackers and ran towards his workplace and informed his boss. Together with his other colleagues, they boarded his motorcycle and proceeded to the Yemen village following intelligence of the hideout of the people who were terrorising the people in town. At the village, they found a mud house with 4 people nearby but managed to arrest 3 after one had escaped. He stated that his boss recovered two mobile phones and a knife. He was later referred to the hospital where he was treated for the sustained injuries on the shoulder and his P3 form filled by the doctor before returning to the police station. He confirmed that his mobile phone was valued at Kshs.19,000 and further identified the knife they had recovered from the 2nd Appellant. He was later subjected to an identification parade with many people and was able to identify the 2 Appellants.
16. On being cross-examined, the witness told the court that the scene of attacks had street lights, that PW3 was not present at the time of attack and that he participated in the arrest of three people who were handed over to the police.
17. PW4 stated that on 8/12/2023 at around 0010 hours, he was working at Huduma Centre when he sent his colleague Ewesiit Lokolia to go and buy airtime only for him to return after a few minutes walking with difficulties with claims that he had been beaten and robbed. He took him aboard his motorcycle and came to Kakuma town where he met 3 other NPR officers. His team had information that the gang had its hideout at Yemen area. The team proceeded there, they found 4 people and managed to arrest 3 of them after one escaped. Upon searching, he found two mobile phones in the pocket of the 2nd Appellant as well as a blue-handled knife. He indicated that his colleague was able to identify his mobile phone which they handed to the police before latter escorting him to the hospital. He added that a boda-boda cyclist who was also attacked and robbed was able to identify his mobile phone, he added that both victims were able to identify the Appellants because the scene was well lit. when put upon cross-examination, the witness denied having been



18. PW5 stated that he was able to examine one Ewisiit Lokolia Achii whose clothes were torn with no blood stains. Despite being in good general condition, he spoke in a hoarse voice and stated that the accused persons were trying to strangle him. He had a tender neck and also a wound at the back of the head as well as chest pains and dark abrasions on the chest. He testified that the complainant did complain of pain in the left elbow, right shoulder and in the right lateral ankle. He issued that the injuries were within days with the probable weapon causing injury being a blunt object. The degree of injury was assessed as harm. He signed and stamped the P3 form which he exhibited in the trial court.
19. He further testified to have filled a P3 form on behalf of Kelvin Tarus Tangasha whose clothes were neither torn nor blood-stained with no past medical history relevant to the injuries. His general condition was good with no evidence of use of alcohol or drugs save for a scratch mark on the neck. The injuries sustained too were within hours and the probable weapon causing injuries was a sharp object with the degree of injury being assessed as harm. He similarly signed and stamped the P3 form and which was too exhibited at trial. On cross examination, he told the court that the victim had a hoarse voice leading to his opinion that he had suffered assault from a blunt object.
20. PW6 was No 235140 IP Chero Omondi. He gave evidence as the officer who conducted the identification parade for both appellants. He testified that he first conducted the parade for the 1st Appellant on 11/12/2023 between 2 pm and 4 pm. The parade consisted of more than 8 people. Prior to the parade, he called upon the 1st Appellants and informed him of the reasons why he wanted to conduct the parade and sought his consent to participate at the parade.
21. He then asked him to choose a position where he would be comfortable to stand in the parade and which the appellant chose between members no 2 and 4. Thereafter, he called the witness to come and confirm whether he could identify the suspect. The witness positively identified the Appellant by touching him. The Appellant was then asked if satisfied and he confirmed being satisfied with the conduct of the parade. He produced the ID parade dated 11/12/2023 as PEx 6 showing the identifying witness as Ewesiit Lokaale as exhibit at the trial court.
22. He subsequently conducted another parade for the 1st appellant with a different witness called Kelvin Tarus. The Appellant opted to change his position and chose to stand between 1 and 3 of the 8 members of the parade. When the witness was called, he positively identified the suspect by touch and the appellant admitted to have been satisfied with the conduct of the parade.
23. The second parade the witness conducted was for the 2nd Appellant on the same day 11/12/2023 at around 2 pm to 4 pm. On the first round of the identification, he stated that the Appellant chose his preferred position between 4 and 6 amongst the 8 members of the parade. He called the 1st witness Ewisiit Lokalia and asked him to identify the suspect which he did by touching. The Appellant confirmed to have been satisfied with the conduct of the parade. He called in a different witness Kelvin Tarus Tangasha. The suspect consented to appear in the parade and chose to stand between numbers 6 and 8. The witness positively identified the suspect by touching and the Appellant admitted to have been satisfied with the parade.
24. The last witness was the investigation officer whose evidence was largely on what he got from the interviews with the complaints and also produced the exhibits in court. He reiterated that the particulars of the incident to be as was reported by the complainants as well as the conduct of the parade. He affirmed that during the robbery incident in both cases, the suspects applied violence to the said victims since they were armed with crude weapons including a knife which was recovered on the 2nd Appellant.



25. Having reviewed the evidence, the court determined that the two had cases to answer and put them on the defence. Both elected to give sworn testimonies.

Defence Case

26. The 1st Appellant told the court that he was schooling in Oropoi and had come to Kakuma to seek for job. He denied knowing the 2nd accused adding that all that time he stayed on the streets with no place to sleep. He stated that the 2nd accused came by and greeted him while he was sitting and asked where he was coming from. He narrated to him the situation and the second Appellant agreed to take him to his house to sleep therein until morning hours. While there at around 11 pm, someone who was being chased from town passed by their door.
27. When the chasers got to their house, they told the chasers that the suspect had passed but the chasers were of the suspicion that the thief was hiding in the house. The chasers having been so many including boda boda riders and some pedestrians then started beating them before they were taken by the roadside with the claim that they had stolen from people. He denied all the charges against him as well as the allegation of having been found in possession of a stolen mobile phone and money.
28. Upon cross examination, he reiterated his evidence of no knowledge of the 2nd accused earlier than the date of the incident save that he was accommodate for the night, conceded that none of his kins had visited him in prison but maintained that no recovery of the exhibits was made from him.
29. On his part, the 2nd Appellant testified that he worked at the Jafas Hotel located in Kakuma town and denied knowing the 1st Appellant before the date of the incident. It was his case that, on the material day, he left work at around 7 pm and met the 1st Appellant seated in the street and in need of aboard for the night. He offered to assist and the two then proceeded to the house he was staying with his younger brother. At around 11 pm, after they had started to sleep, they heard footsteps passing by their door but never bothered.
30. Following closely was a group of boda boda riders, some pedestrians and a motorcyclist, who asked for the person had passed by and they informed them that the person had gone away. They left but returned and insisted that they knew the whereabouts of their target before starting to beat them. The group beat the 1st Appellant before being taken to the roadside. Later, a police van came and took them to the police station with the 1st Appellant being taken to the hospital while he was left in the police cell. He denied all the contents of the charge against him.
31. Upon being cross-examined he stated that he lived with a brother whose name he couldn't remember immediately but he was not calling as a witness. On engagement in Kakuma, he said he had worked in a hotel for two months, would work from morning to evening and was in fact from work when he met the 1st accused and took him home. At the time of arrest, he said they were assaulted before being taken to the police, even thought he was never taken to the hospital. He denied having been arrested with others apart from the 1st appellant. He also denied that any exhibit was recovered from him and that he only saw the mobile phone in court and its owner at the police station

Trial Court's Decision

32. Applying the doctrine of recent possession, the trial court in its determination held that there was evidence to confirm that indeed the mobile phones which PW1 and PW3 identified as theirs had been shortly stolen from them. The fact that the 2nd Appellant had in his possession the stolen items, the onus shifted on him to explain how he came to be in possession of the same but failed to do so.



33. The court further found that the defence advanced by the Appellants never removed them from culpability and that the allegation of mistaken identity was not available in their favour. The court was convinced that both the complainants were able to identify the appellant in the identification parades as being part of the two incidents. It was posited that the circumstantial evidence tendered by the prosecution pointed to an inference of guilt without any rebuttal evidence offered.
34. The court then concluded that the prosecution had proved its case against Appellants for both the two counts of robbery with violence for having acted jointly and with common intention and hence convicted the Appellants pursuant to Section 215 of the Criminal Procedure Code. They were given a sentence of 12 years to each.

The Appeal

35. The Appellants were aggrieved by the trial court's decision lodged the instant appeal vide a document titled 'Application' with a sub-heading 'Grounds of Appeal'. The document was registered as an appeal with consideration that the Appellants acted in person. Notably, the Appellants do not dispute the trial court's conviction. They are merely seeking leniency in reduction of the sentence imposed by the trial court.
36. The grounds for seeking reduction of the sentence are that; the first appellant is a remorseful destitute youth and a student at Oropoi primary school in grade seven. For the second Appellant it is contended that he is a destitute orphan without proper parentage being the mother never told him more of his father's death. The Applicant present to be the provider of his needy and physically enabled mother who is unable to fend for herself. Being a first offender at the trial court, the Appellant is remorseful of his action and prays for a reduction of the 12 years imprisonment sentence and be placed to perform non-custodial sentence.

Analysis and Determination

37. The only issue for determination in this appeal remains whether the 12-year sentence imposed by the trial court on the Appellants was manifestly excessive or harsh in the circumstances of the case. When an Appellate court would interfere with the discretion of the trial court on sentence is now well settled to be that interference is permitted unless it is evident that the court overlooked some material factors, took into consideration some immaterial fact yet failed to take into account the material fact, acted on wrong principle or the sentence is manifestly excessive in the circumstances of the case. See *Wanjema v Republic* (1971) E.A. 493 and *Shadrack Kipchoge Kogo v Republic*, Criminal Appeal No. 253 of 2003
38. In this matter the appellants were charged with capital robbery with violence and the court imposed a sentence of 12 years imprisonment. The plain understanding of Section 296(2) upon which the Appellants were convicted is that it provides a mandatory sentence of death on persons who commit an offence of robbery with violence. To this court the sentence was not only lenient but overly lenient to the extent that had the prosecution asked for enhancement, the court would have felt appropriately invited. I
39. Looking at the circumstance of this case and the manner in which the appellants executed the robbery, it is the court's considered view that the sentence was very lenient thus deserves no reduction or revision
40. Accordingly, the appeal lacks merit and is dismissed in its entirety.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 24TH DAY OF SEPTEMBER, 2025

PATRICK J O OTIENO



JUDGE

