



**Barngetung v Republic (Criminal Appeal E007 of 2024)  
[2025] KEHC 14071 (KLR) (9 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 14071 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDAMA RAVINE  
CRIMINAL APPEAL E007 OF 2024  
RB NGETICH, J  
OCTOBER 9, 2025**

**BETWEEN**

**VINCENT KIYAI BARNGETUNG ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(This is an appeal arising from the judgment of the Senior Principal Magistrate's Court at Eldama Ravine Delivered by Hon. A. Towett on 9th September 2024 in Criminal Case No. E876 of 2022)*

**JUDGMENT**

1. The Appellant Vincent Kiyai Barngetung alias Cosmas Ruto was charged with the offence of robbery with violence contrary to Section 296(2) of the Penal Code. Particulars were that on the 2<sup>nd</sup> day of September 2021 at Maji Mazuri forest, in Koibatek Sub-County within Baringo County, being armed with a dangerous weapon namely a pen knife robbed Petronila Jemutai Kenduiywo of her cash money Ksh. 15,000/=, Ksh. 13,000/= from her M-pesa account no. 0717-115-163 and a smart phone make SAMSUNG GALXY J-2 valued at Ksh. 25,000/= and immediately before the time of such robbery threatened to injure the said Petronila Jemutai Kenduiywo.
2. The trial court, upon hearing the evidence, convicted the Appellant and sentenced him to 15 years imprisonment. Being dissatisfied with the conviction and/or sentence, the Appellant lodged the present appeal.
3. In his Petition of Appeal dated [date], the Appellant raised the following grounds:-
  1. That the learned trial magistrate erred in law and facts by highly indicating in her judgement that the accused took an identity card of the complainant and withdraw PW1 money in m-pesa which was not mentioned by the complainant in her testimony.



2. That the learned trial magistrate failed by convicting accused on false evidence of PW2 that the accused was requesting Safaricom data to be availed in court but it was never availed by the prosecution.
3. the learned trial magistrate failed to look at the evidence in the totality as the count is entitled to look at the evidence and circumstance in totality.
4. That the learned trial magistrate failed to have not considered the existing grudge between the accused and the complainant.
5. That the learned trial magistrate failed by lightly indicating in his judgement that all prosecution witnesses collaborated the complainant evidence.
6. The Appellant prays that the appeal be allowed, the conviction be quashed, and the sentence set aside [or varied accordingly].

### **Appellant's Submissions**

4. The Appellant, in his detailed written submissions, argues that the trial court's judgment is fundamentally flawed due to a failure to correctly apply legal principles and a misapprehension of the evidence. His submission focuses on two main broad areas being failure by the prosecution to prove the ingredients of robbery and the unreliability of the prosecution's case.
5. On Failure to Prove the Ingredients of Robbery (S. 296(2) of the Penal Code), the Appellant argues that the essential elements of Robbery with Violence were not met as there was no Force/Threats Proven. He contends that the Appellant the complainant (PW1) was not forced or threatened to enter the forest. He highlights PW1's failure to mention her ID being stolen and argues that crucial elements of violence or threat required by law were absent or unproven.
6. The Appellant further argues that the prosecution relied entirely on circumstantial evidence, and the trial court failed to apply the rigorous three-pronged test (as established in cases like Abanga) and submits that the circumstances presented by the prosecution are ambiguous and do not form a complete chain unequivocally pointing to his guilt.
7. He further submits that there is insufficient Evidence and cites the M-Pesa agent's (PW2) contradictory testimony regarding his float balance and the specific amount transferred to argue that the evidence regarding the theft was doubtful and insufficient to sustain a conviction.
8. On Unreliability and Contradictions in Prosecution's Case the Appellant submits that the credibility of the prosecution's case was severely compromised by glaring contradictions and procedural failures and pointed out that there were glaring Contradictions in evidence of PW1, PW5, PW2 as in respect to Motive/Maize Deal, PW1 gave four conflicting versions regarding her role in buying school maize, which the Appellant uses to suggest a fabricated motive to hide their alleged "sugar mummy" relationship. Secondly, on Stolen Items/Scene, PW1 and PW5 contradicted each other on whether the complainant's ID was stolen and the exact location of the crime (Maji Mazuri vs. Benonin forest). In respect to PW2's Identity, PW2 gave conflicting evidence as to whether he knew the Appellant prior to the M-Pesa transaction.
9. The appellant submits that there were shoddy Investigation and Adverse Inference in that the Investigating Officer (IO/PW5) admitted no witness saw the Appellant at the crime scene. Further, the prosecution failed to call material witnesses (the boda-boda rider, the two people PW1 allegedly met, and a Safaricom data analyst). The Appellant and cites the case of *Bukenya v Uganda* that the court should infer that their evidence would have been adverse to the prosecution's case.



10. The appellant further submits that the Investigating officer irregularly identified him by "face" on 21/9/2022 while he was in custody for a separate offence which casts doubt on the subsequent identification parade.
11. The appellant further submits that the magistrate erred by rejecting the Appellant's sworn defence—which offered a counter-motive (retaliation over stolen money from the relationship) and an alternative explanation for the interaction—without giving sound, cogent reasons.

### **Respondent's Submissions**

12. The prosecution counsel responded orally. She opposed the appeal and argued that on the issue of the appellant not being supplied with statements, page 2 of the proceedings confirm that statements were ready and the appellant was supplied with the statements and a look at the proceedings is that thereafter, the appellant fully participated in the proceedings.
13. Counsel further submitted that the prosecution availed 5 witnesses who were able to prove that it is the appellant who was armed with a weapon, a pen knife on 2<sup>nd</sup> September 2021 and that he threatened to injure the complainant Petronila Chemutai and immediately thereafter, he robbed her cash Kshs 15,000 and Kshs 13,000 which was in her mpesa account number 0717115163 and also robbed her mobile phone Sumsung Galaxy J2.
14. The prosecution counsel further submitted that pw1 the complainant herein gave detailed account of how the appellant lure her from 27<sup>th</sup> August 2021 when they travelled together aboard public service vehicle from Kabarnet to Eldama Ravine and it is then when the appellant was able to obtain the complainant's mobile phone number and lied to her that he had maize to sell and it was on that basis that he was able to lure her on 2<sup>nd</sup> September 2021 to Maji Mazuri forest where he said he had kept the maize in his grandfather's home and that is where the appellant threatened the complainant with a knife and robbed her.
15. The prosecution counsel submitted that the complainant's evidence was corroborate by evidence of Pw2 an Mpesa agent by the name Lodwala at Eldama Ravine. That Pw2 confirmed that he assisted the appellant to withdraw money from the complainant's Mpesa account even though he was not physically present at the shop having lied to her that he was assisting his Aunt to withdraw money and that pw2 said he believed the appellant because he was well known to him and had withdrawn money severally from his shop and that the appellant provided identity card for the complainant as shown by Mpesa statement availed to court as exhibit 1 and 2 which confirm the transaction was from the complainant's account. Further exhibit 4 show that shortly after money was withdrawn from complainant's account, Kshs 12,000 was deposited in appellant's account at the same shop on the same date 2<sup>nd</sup> September 2-21 and appellant does not dispute that money was deposited in his account the same day at the same shop.
16. On argument that appellant's defence was not considered, the prosecution counsel submitted that at page 59 of the proceedings, it shows that the trial court considered accused's evidence; that the court indicated that the accused's defence did not challenge prosecution evidence.
17. The prosecution counsel submitted that the appellant argued that pw2 lied in his evidence but in his defence, he did not punch holes in evidence of pw2. further that the appellant agreed that he had transacted at the mpesa shop and that pw2 knew him and he further admitted that money was deposited in his account on 2/9/2024 and he did not give reason why pw2 would incriminate him and further he did not give his detailed account of where he was on 2/9/2024 neither did ne calla witness to support his case.



## Analysis And Determination

18. This being a first appellate court, I am required to re-evaluate and re-analyze the evidence on record afresh and draw my own conclusions, bearing in mind that I neither saw nor heard the witnesses testify. (See *Okeno v Republic* [1972] EA 32).
19. The appellant was charged with the offence of robbery with violence contrary to Section 296(2) of the Penal Code. The prosecution therefore bore the burden to prove that the complainant was robbed of property, and that the robbery was attended by one or more of the following circumstances: that the offender was armed with a dangerous or offensive weapon or instrument; or that he was in company with one or more other persons; or that immediately before or after the robbery, he wounded, beat, struck, or used personal violence to any person.
20. Having carefully examined the record of the trial court and the submissions on appeal, the issues that arise for determination are whether the ingredients of the offence were proved beyond reasonable doubt, and whether the sentence imposed was lawful.

### **i. Whether ingredients for the offence of robbery with violence were proved beyond reasonable doubt**

21. Section 296(2) of the Penal Code provides that a person commits the offence of robbery with violence if, at the time of the robbery or immediately before or after, he—
  - i. is armed with any dangerous or offensive weapon or instrument, or
  - ii. is in company with one or more other persons, or
  - iii. immediately before or after the robbery, wounds, beats, strikes, or uses any other personal violence to any person.
22. It is sufficient if any one of the above ingredients is proved (*Oluoch v Republic* [1985] KLR 549).
23. In the present case, although the appellant was not in the company of others, and there was no evidence of a conventional weapon, the record shows that he used actual violence and coercion upon the complainant in the course of stealing. The complainant testified that once they were inside the forest, the appellant grabbed her phone, demanded her M-Pesa PIN, and under threat forced her to disclose it. He then withdrew and transferred money from her account. That conduct satisfies the third ingredient—use of personal violence—as the complainant’s will was overborne through force and intimidation.
24. Further, the appellant’s actions were premeditated. He lured the complainant to an isolated location under false pretences that they were going to his grandfather’s home, thereby creating a situation of vulnerability and control over the victim. Such deceit and manipulation are consistent with a robbery scenario where violence, whether physical or psychological, is employed to facilitate theft.
25. The prosecution’s evidence through PW2 and PW5 corroborated the complainant’s account. PW2, the M-Pesa agent, confirmed that the appellant personally requested to withdraw money from the complainant’s phone. PW5 produced certified M-Pesa transaction records linking the appellant’s number to the stolen funds. This chain of evidence firmly places the appellant at the scene and connects him with the proceeds of the robbery.
26. The appellant’s claim that the complainant voluntarily gave him money because of their intimate relationship is implausible. There was no proof of such a relationship, nor of the alleged Kshs. 100,000 transaction for a motorbike. He failed to call Kennedy Ngao, or any other witness, to corroborate his version. His defence was therefore a mere afterthought.



27. I am persuaded, as was the trial magistrate, that the prosecution proved all the essential elements of robbery with violence beyond reasonable doubt being that there was theft of the complainant's money withdrawn and transferred from her phone), the theft was accompanied by violence and threats upon the complainant; and the appellant was the perpetrator, positively identified through the direct evidence of PW1 and corroborated by documentary evidence from PW5.

**(ii) Whether sentence imposed was harsh and excessive**

28. The section under which the appellant was charged provide for mandatory death sentence. The trial court however imposed 15 years imprisonment upon convicting him. Considering the fact that the section under which the appellant was charged provide mandatory death sentence, I find that the trial court was lenient but in view of the fact that no notice of enhancement of sentence was given to Appellant, I will not interfere with the sentence imposed by the trial court.

29. From the foregoing, I find that the charge of Robbery with violence was contrary to section 296(2) of the Penal Code was proved beyond reasonable doubt. The appeal therefore lacks merit.

30. Final Orders:-

1. Appeal is dismissed in its entirety.
2. Trial court sentence upheld.

**JUDGMENT DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 9<sup>TH</sup> DAY OF OCTOBER, 2025.**

.....  
**RACHEL NGETICH**  
**JUDGE**

In the presence of:

Mr Mwangi for State.

Appellant present.

CA, Elvis.

