



REPUBLIC OF KENYA



**KENYA LAW**  
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**Sifuna v Republic (Criminal Appeal E006 of 2025)  
[2025] KEHC 13679 (KLR) (1 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 13679 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KITALE  
CRIMINAL APPEAL E006 OF 2025  
RPV WENDOH, J  
OCTOBER 1, 2025**

**BETWEEN**

**ANDRIAN SIFUNA ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**JUDGMENT**

1. Adrian Sifuna alias Rama was charged with the offence of Robbery with violence contrary to section 296(2) of the Penal Code.
2. The particulars of the charge are that on 19/7/2022 at about 7.30p.m., at Matisi area of Saboti sub-county, jointly with others not before the court, while armed with dangerous weapons, namely knives / pangas and sticks, violently robbed Joseph Marango of his two mobile phones make Neon Ray worth Kshs.5000/= and Itel worth Kshs.2,500/= and immediately before/or after the time of such robbery, stabbed the said Joseph Marango with a knife occasioning his death.
3. The case proceeded to full trial with the prosecution calling a total of six witnesses. At the close of the prosecution case, the accused was called upon to defend himself. He testified on oath and called one witness.
4. The appellant was convicted and sentenced to twenty-five (25) years imprisonment.
5. The appellant is dissatisfied with the conviction and sentence and has preferred this appeal based on the following grounds;
  1. That crucial witnesses were not called;
  2. That the prosecution evidence was riddled with contradictions;
  3. That the offence of Robbery with violence was not proved to the required standard;



4. That the appellant's defence was not considered;
5. That the court failed to consider the appellants mitigation before sentence.
6. This being a first appeal, it is required of this court to reexamine all the evidence tendered before the trial court, analyze and evaluate it, and draw its own conclusions but make allowance for the fact that it neither heard nor saw the witnesses testify. This court is guided by the decision of *Okeno -V- Republic* (1972) EA32.

**The Prosecution case.**

7. PW Rashid Waiyongo testified that on 19/7/2023, while in school on duty, he received a call from his uncle Martin Barasa who informed him that his nephew, Joseph Marango had been attacked and taken to Kitale Referral Hospital. He went to the hospital and found the said Joseph on the floor and the doctor informed him that he was dead. He later identified the body for purposes of Post Mortem.
8. He started to look for one Rodgers who had information on how the deceased died. He later found Rodgers who informed him that the deceased had been injured in a robbery at Matisi Corner; that the deceased's phone fell.
9. PW2 Rodgers Wamalwa Museveni, a resident of Matisi and bodyguard to Member of Parliament, recalled that on 19/7/2023, they were at Ferdinand Wamalwa's house and left on a motorcycle. They met rowdy youth on the road. He knew three of them Rama, Hassan and Jamal; that he was with Joseph Marango (deceased); that he was hit with a stone on the head, that Rama had a knife and stabbed Joseph with it on the thigh. He assisted in taking Joseph to Hospital where he was declared dead. He stated that he recovered the deceased's two phones from the accused Neon and Itel.
10. In cross examination, PW2 revealed that the incident occurred about 7.00p.m. and that there were lights at the scene.
11. PW3 Jared Odhiambo Opondo, a businessman at Matisi recalled 19/7/2023 about 7.00p.m. when outside his place of work, he saw youth block the road. Later, there were bonfires, that his wife arrived and informed him that a person called Terminator had fallen, that the said Terminator came to his shade, called him 'Baba'; that he was crying and referring to his leg, that he asked for water, drunk and fell; that the assailants escaped; they used a motor cycle to take him to hospital where he died. At the hospital is where he noticed that the person had a stab wound on his leg. He said Terminator is the same person as Joseph Marango who died. In cross examination PW3 said that there was a blackout in the area at that time but there was some reflection of light from the Petrol station; that there were also solar light and lights from phones. He confirmed that Rodgers (PW2) was present at the scene.
12. PW4 Paul Masibo recalled the 19/7/2023 about 8.00p.m. when at his place of work, when his friend called to inform him that Terminator had been injured and there was a blackout. He told him to take him to the District Hospital and they took him to hospital and the deceased's body was placed in the mortuary. Later he learnt that Rodgers had arrested one of the robbers.
13. PW5 Dr. Denis Nanyingi of Kitale Referral Hospital recalled that on 21/7/2023 he conducted a post mortem on Joseph Morango He formed the opinion that he died of Haemorrhagic shock and internal abdominal bleeding secondary to assault by a sharp object; He stated that the deceased was stabbed on the left thigh.
14. PW6 Cpl. Godwin Ogola of DCI Kwanza is the Investigating Officer in this case, he recalled that on 20/7/2023 about 6.00p.m., he was instructed by the DCIO, to investigate the case. He met Rodgers Wamalwa Jared Odhiambo and Rashid Waingo and recorded their statements; He was informed that



they were coming from Matisi about 8.00p.m. on 19/7/2023 when they found some thugs had erected a road block and attacked them and robbed them of phones; that Joseph Marango was stabbed and his phone stolen and that he was taken to Hospital where he died; that Rodgers named Jamal, Hassan and Rama as some of the robbers; Later, PW6 learned that Rodgers had arrested Rama and he was at Kitale Police station. He charged the said Rama alias Adrian Sifuna; that two phones E.Exh.1 and 2 were recovered by Rodgers from the Appellant.

#### **Defence Case: -**

15. The appellant testified on oath and recalled that on 19/7/2023 at 7.20 p.m. he was at home, watched news at 9.00p.m. Concerning this case, he denied knowing the deceased or robbing him; that on 21/7/2023. Rodgers stopped him and informed him that they had photographs of him at the scene and police arrested him; that his father had left him with the mother at 6.00p.m. as he went. He denied being known by the name Rama.
16. Violet Nangehe Wahuya. from Namanjalala told the court that the appellant is her fourth born son. She recalled at 7.30p.m. on 19/7/2023, she was at St. Johns Matisi with Adrian & Job when her son told her that there was teargas. They slept and next day, Adrian left to look for work and later John informed her that Adrian had been arrested.

#### **The appellants Submissions:**

17. It is the appellant's submission that the offence of robbery with violence was not proved because first, the phones were not found with him because PW2 stated that they had fallen down. He argued that the elements required to be proved were not proved.

#### **The Respondent's Submissions:-**

18. The Prosecution Counsel filed submissions and identified four (4) issues for determination being
  1. Whether the offence of robbery with violence was proved;
  2. Whether there were material contradictions in the prosecution evidence;
  3. Whether the defence was considered;
  4. Whether the sentence is legal.
19. On proof of the offence of Robbery with Violence, Counsel relied on the decision of Charles Maina Wamai -V- Republic (2003) where the court set out the three elements that the prosecution must prove one of them, in a charge of robbery with violence.
20. Counsel submitted that the appellant was identified as one of the gang members who attacked the deceased; that the appellant was also armed with a knife and thirdly, that the knife was used to inflict injuries on the deceased.
21. In addition, it was Counsel's submission that the appellant was found in possession of the deceased phones. He relied on the case of Malingi -V- Republic (1989) KLR 225 on the doctrine of recent possession. He urged that all the elements that need to be proved to establish recent possession were established
22. On the defence, Counsel argued that it was contradictory; that whereas the appellant claimed to have been at home, DW2 said she was with him at St. Joseph's Matisi; that for an alibi to be properly raised, it



must meet the criteria set out in *Karanja -V- Republic (1983) eKLR*; that the alibi was an afterthought and the court was justified in rejecting it.

23. On sentence, Counsel said that the Appellant was sentenced to only twenty-five (25) years; that the case of *Muruatetu II* Clearly states that that case only applies to murder cases; He also relied on the case of *Hassan Kahindi Katana & Another -V- Republic (2022) KECA 1160* where a person was sentenced to death for robbery with violence and that Court of Appeal upheld the said sentence. The Counsel urged this court to correct the error by enhancing the sentence.

**Determination: -**

24. I have duly considered the grounds of appeal, the evidence tendered in the trial court and submissions of both parties.
25. The appellant faced a charge of robbery with violence. In *Oluoch -V- Republic (1984) KECA 39 (1985 KLR 549)* the court held “under Section 296 (2) of the Penal Code. Robbery with violence is committed in any of the following circumstances;
1. “The offender is armed with any dangerous or offensive weapon or instrument; or
  2. The offender is in company with one or more other persons;
  3. 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”.
26. See also *Charles Maina Wamai (Supra) In CRA 300/2007, Dima Denge Dima & others -V- Republic* the court stated that the ingredients of the offence of robbery with violence are appreciated disjunctively not conjunctively. It is therefore proper to convict an offender in instances where only one of the ingredients is proved. The Court said
- “..... The elements of the offence under Section 296(2) are three in number and they are to be read not conjunctively, but disjunctively. One element is sufficient to found an offence of robbery with violence....”
27. PW2 was the only witness to the robbery. He testified that he was with the deceased on a motorcycle when they found rowdy youths had blocked the road and attacked them; that at first, the deceased was hit with a stone and fell before he was stabbed. Apart from the robbers being more than one, they were armed and they visited violence on the deceased who met his death as a result of the attack.
28. From the cross examination of PW2, the attack occurred about 7.00p.m. and he identified the appellant as Rama who was with Jamal and Hassan. PW2 said that there were lights at that scene. He denied that there was a blackout on that night. The question is whether the appellant was properly identified under the circumstances.
29. PW3, a businessman at Matisi witnessed the rowdy youths that blocked the road and robbed people. He confirmed that the incident occurred about 7.00p.m. and that he saw the person who was injured come to his shade and he identified him as Joseph Marango aka Terminator and he helped take him to hospital. In cross examination PW3 said that there was a blackout on that night but that there was a reflection of some light from the petrol station. He also said that there were also solar lights and lights from phones. He did not however see how the deceased got injured. He saw deceased at the shade after the incident when he asked for water.
30. The trial court based the conviction on evidence of a single identifying witness under unfavourable conditions. When relying on such evidence, the court has the duty of warning itself of the danger



of relying on such evidence. The court in Republic -V- Turnbull (1973) ALL ER 549 considered some of the facts that the court should take into account if the case turns on identification of a single witness. The court said “...the judge should direct the jury to examine closely the circumstances in which the identification by each witness came to be made. How long did the witness have the accused under observation? At what distance? In what light? Was the observation impeded in any way, as for example by passing traffic or a press of people? Had the witness ever seen the accused before? How often? If only occasionally, had he any special reason for remembering the accused? How long elapsed between the original observation and the subsequent identification to the police? Was there any material discrepancy between the description of the accused given to the police by the witness when first seen by them and his actual appearance? .... Finally, he should remind the jury of any specific weakness which had appeared in the identification evidence. Recognition may be more reliable than identification of a stranger; but, even when the witness is purporting to recognize someone whom he knows, the jury should be reminded that mistakes in recognition of close relatives and friends are sometimes made”

31. Under section 143 of the Evidence Act, a fact may be proved by the testimony of one witness unless a particular law requires otherwise, that there be more than one witness. The court in Abdalla Bin Wendo & Another -V- Republic (1953) 20 EACA 166 confirmed the application of Section 143 of the Evidence Act.
32. In Wamunga -V- Republic (1980) KLR 424, the court said  
“it is trite law that, where the only evidence against a defendant is evidence of identification by recognition a trial court is enjoined to examine such evidence carefully and to be satisfied that the circumstances of identification were favourable and free from possibility of error before it can safely make it the basis of a conviction.”
33. In Maitanyi -V- Republic (1956) KLR 198, the court said that when considering evidence of a single identifying witness under unfavourable conditions, the court has to warn itself of the danger of relying on such evidence.
34. In Eria Seb watu -V- Republic CRA 37/1960 the court said that for the court to rely on evidence of a single identifying witness under unfavourable conditions, the said evidence must be watertight.
35. In this case, whereas PW2 said that there were lights and denied there being a black out that night, PW3 did testify that there was a black out and the only light was a reflection from the petrol station, solar lights and mobile phones. Besides, PW2 did not tell the court what light he used to see the assailants, whether solar, mobile or electricity. He did not say how far the light was from the scene and how long he had the assailants in view.
36. Although the trial court made a finding that the appellant was positively identified by PW2, 4 and 6 as the robber, that is not the position. PW2 did not disclose what light was available at the scene to enable him see the assailants.
37. PW4 was only informed of the deceased being injured while PW6 received the report of the incident the next day on 20/7/2023.
38. The prosecution submitted that the appellant was found in recent possession of the deceased’s phones hence he was the robber. The trial court did not address that issue in its judgment.
39. PW2 told the court that he recovered the deceased’s phones Neon Red Imei 352478117519340 and Itel plus IMEI 351396630601520 from the appellant and they were produced in evidence as P.Exh. No. 2 and 3. For the Prosecution to rely on the doctrine of recent possession it has to establish the elements



set down in Isaac Ng'anga Kahiga alias Peter Nganga Kahiga -V- Republic (2006) eKLR, where the court said "It is trite that before a Court of law can rely on the doctrine of recent possession as a basis for conviction in a criminal case, the possession must be positively proved. In other words, there must be positive proof, first, that the property was found with the suspect, secondly, that the property is positively proved to be the property of the complainant, thirdly, that the property was stolen from the complainant and lastly, that the property was recently stolen from the complainant. The proof as to time, as was been stated over and over again, will depend on the easiness with which the stolen property can move from one person to the other." See also Malingi -V- Republic Supra

40. In the instant case, PW2 did not clearly tell the court when he recovered the two phones from the appellant and where he found the appellant. Most importantly, apart from PW2 stating that the two phones were the deceased's, there is no evidence to support that fact for example receipts or even better evidence from service providers i.e Safaricom or Airtel to confirm if the lines used in the phones belonged to the deceased. The Investigating Officer did a half-baked job by not availing evidence to prove ownership of the phones. Having failed to positively identify the phones as the deceased's, the doctrine of recent possession cannot be relied upon
41. From the foregoing this court is satisfied that the prosecution did not adduce sufficient evidence to found a conviction. The appeal has merit. The conviction is unsafe and I hereby quash it and set aside the sentence. The appellant is set at liberty forthwith unless otherwise lawfully held.

**JUDGMENT DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAPENGURIA THIS 1ST DAY OF OCTOBER, 2025.**

**R. WENDOH**

**JUDGE**

In the Presence of:-

Appellant – in person

Mr. Majale for Respondent

Juma/ Hellen Court Assistants

