



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Ali (Criminal Case E150 of 2025)
[2025] KEMC 192 (KLR) (5 August 2025) (Judgment)**

Neutral citation: [2025] KEMC 192 (KLR)

**REPUBLIC OF KENYA
IN THE LAMU LAW COURTS
CRIMINAL CASE E150 OF 2025
FM MULAMA, RM
AUGUST 5, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

SHEE HASSAN ALI ACCUSED

JUDGMENT

A. Introduction.

1. On the 4th day of July 2025 at around 1030hours at Kijitoni area of Langoni location in Lamu county Shee Hassan Ali was found with offensive weapon to wit knife and wooden stick in circumstances that indicated he was so armed with the intention to commit a felony name stealing and this informed the decision to charge the accused with the offence of preparing to commit a felony contrary to section 308(1) of the *Penal code*.
2. 2 witnesses were called by the prosecution to prove the charges against the accused persons and the accused after being placed on his defence he opted to remain silent.

The Prosecution's case.

3. It is the prosecution's case that on 4/7/2025 at around 10:30am Pw 1 and 2 were on their way to King Fahad hospital to take a suspect to have his methadone dose administered and on the way they met the accused who was having a wooden stick that had a metallic ring on one end of the said stick and they intercepted him to question him why he was armed. Upon further search a knife was found on his right side of his waist.
4. He was then questioned why he had the 2 weapons and he could not explain and that is how he was arrested and processed for court and now faces the charges at hand.



5. It was the evidence of the prosecution that in the absence of any explanation why he had the 2 weapons they formed an opinion that he was so armed in preparation to commit a felony namely stealing and further there were numerous reports of incidences of theft and such weapons were used for stealing purposes.
6. The accused in cross exam sought to propose to Pw 2 that he was using the wooden to guide his donkey but Pw 2 was clear that there was no donkey in site.

B. Issue for Determination.

7. Has the prosecution proved the charges against the accused person beyond reasonable doubt? In order to answer this question in the affirmative the following issue is to be determined in the affirmative.
 - a. Whether the charge of preparation to commit a felony has been proved.

C. Analysis and Determination.

Whether the charge of preparation to commit a felony has been proved.

8. Section 308(1) of the *Penal Code*, Cap 63 provides as follows:-

308. Preparations to commit felony

- (1) Any person found armed with any dangerous or offensive weapon in circumstances that indicate that he was so armed with intent to commit any felony is guilty of a felony and is liable to imprisonment of not less than seven years and not more than fifteen years.

9. This provision of the law was discussed in Criminal Appeal No. 59 of 2000 *Manuel Legasiani & 3 Others versus Republic* (2000) eKLR where the Court of Appeal placed much emphasis on the word “preparation”; in its decision, the Court asked itself whether in the case before had any evidence of preparation to commit a felony. In unraveling this question the Court said:-

“The word preparation is not a term of art. In its ordinary meaning it means “the act or an instance of preparing” or “the process of being prepared”. This is the meaning ascribed to the word “preparation” in the Concise Oxford Dictionary, Eighth Edition. To prove the offence in question some overt act, to show that a felony was about to be committed, has to be shown. Mere possession of a firearm not coupled with such an overt act is not an offence under section 308(1) of the Penal Code. If the offence is a lethal weapon and is held without a licence another offence may be indicated.”

10. In order to convict under section 308(1) of the *Penal Code* this trial court must be satisfied beyond all reasonable doubt that the accused person was not only in possession of what has been described as “dangerous or offensive weapons” to wit a knife and a wooden stick but must also demonstrate that there was some act tending towards what would amount to preparation to commit a felony.
11. The prosecution has also to discharge the burden of proving that whatever article that is considered a weapon in the context of section 308(1) is “dangerous” and “offensive” and the court must equally be satisfied beyond reasonable doubt that sufficient evidence has been led to bring the weapon within this definition.
12. In *Mwaura & Others versus Republic* 1973 EA 373 the Court of Appeal for East Africa described dangerous and offensive weapons as understood under section 308(1) to mean “any articles made or



adapted for use for causing injury to the person, such as a cosh, knuckleduster or revolver; or any articles intended, by persons being found with them for use in causing injury to the person.”

13. For the word “dangerous” and “offensive to make sense” the context under which they were in possession or being held should demonstrate intention of making use of them for a particular act.
14. In this case Pw 1 stated thus;

“...On the way to King Fahad Hospital we came across a person who was armed with a wooden stick with a metallic ring and a knife and upon inquiry why he had those weapons he was not able to explain...”
15. As already observed herein above, the standard set by the court of appeal is not the inability of the accused to explain why he is in possession of the “dangerous” and “offensive” but that the accused person was not only in possession of what has been described as “dangerous or offensive weapons” to wit a knife and a metal rod but must also demonstrate that there was some act tending towards what would amount to preparation to commit a felony. This was not demonstrated by the prosecution. All we have been told is that the police met the accused while armed with those items and his undoing was failure to explain why he had them.
16. Furthermore, no sufficient evidence was led to bring the weapons found in possession of the accused within the definition of “dangerous” and “offensive”. The knife (Pexh 2) was a kitchen knife it could therefore be possible that the accused was to use the same for kitchen purposes or better still for fishing exercises which is a core source of livelihood and food in this county. I am ever aware some are in the business of removing scales from fish and this knife the main tool for this enterprise. In addition, the wooden stick (Pexh 1) no explanation was given by all the witnesses to bring it within the meaning of a dangerous and offensive weapon all Pw 2 stated was that he has information of numerous reports where such weapons are used for offences such as stealing.
17. No explanation was made how they are used to undertake theft but, in any event, the law mandates the prosecution to demonstrate an overt act done by the accused to place him within the meaning of preparation to do an act. No evidence has been placed before the court to say exactly what the accused was doing that made the police conclude that he was preparing to commit a felony.
18. The long and short of it is that the prosecution failed to prove and/or demonstrate that there was some act tending towards what would amount to preparation to commit a felony by the accused person and therefore I find that this evidence was far from sufficient to prove an overt act of preparation or intent to commit a felony. Though the accused was in possession of dangerous weapons, he did not do anything with those weapons that would imply that he intended to commit a felony.
19. In the *Manuel Legasiani Case* (supra), the court considered a case where one of the accused, who had stopped the complainant was found with accused was found with in possession of a home-made firearm, a torch and a knife. The court on the aspect of preparation had this to say, “The mere act of flagging down a vehicle does not, per se, denote an overt act of preparing to commit a felony. On that score alone this appeal ought to be allowed; but there is the other issue posed by us.”
20. In the same vein I dare find and hold that the mere act of being in possession of a knife and a wooden stick which could easily be used to remove scales from fish did not per se denote and overt act of preparing to commit a felony and consequently the charge must fall.

D. Conclusion and Disposition.

21. The upshot of the foregoing is that the prosecution failed to prove the count facing the accused person.



22. The accused person is thus acquitted in the charge facing him under section 215 of the CPC for the offence of preparation to commit a felony contrary to section 308(1) of the Penal Code.
23. Orders accordingly.

DATED, SIGNED AND DELIVERED AT LAMU LAW COURTS THIS 5TH DAY OF AUGUST, 2025.

F.M. MULAMA

RESIDENT MAGISTRATE

In the presence of:

Peter Birir for DPP.

Shee Hassan Ali

Court Assistant:- Fathiya Loo.

