



**Kimani v Republic (Criminal Appeal E025 of 2022)
[2025] KEHC 15408 (KLR) (28 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 15408 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL APPEAL E025 OF 2022
JM NANG'EA, J
OCTOBER 28, 2025**

BETWEEN

SAMUEL KURIA KIMANI APPELLANT

AND

REPUBLIC RESPONDENT

JUDGMENT

The Charge laid against the Appellant

1. This Appeal is against the Appellant's conviction and sentence in the lower court for violent Robbery Contrary to Section 296 (2) of the Penal Code. He was charged jointly with another that on 27th August 2018 at Likia Village, Njoro Sub County, within Nakuru County while armed with offensive weapons namely, pangas and rungun they robbed Simintei Lemara ("the complainant") of Kshs. 20,000/= , and during the robbery used personal violence against the Complainant.
2. The Appellant and his co-accused denied the offence. After full hearing of the case, both were convicted as charged pursuant to the provisions of section 215 of the Criminal Procedure Code, by judgment delivered on 4th February 2022 and sentenced to life imprisonment each.
3. The Appellant relies on five Grounds of Appeal that may be condensed into two broad grounds to wit;
 - i. That the conviction was against the weight of evidence;
and
 - ii. That the sentence meted out is harsh or excessive in the obtaining circumstances.



The Evidence

4. The evidence adduced before the trial court in summary is that the Complainant was a farmer residing in Likia, Mau Narok, Nakuru County. On 27th August 2018 he sold his 3 sheep to a butcher at Likia Market for Kshs. 24,000, out of which he spent Kshs. 4, 000. In the evening he walked to the “boda boda” stage but failed to get transport means to his home and decided to walk back to the market to spend the night there. As he walked through a dark place, 3 strangers attacked him near a ditch. He had been walking with them before they made a detour and re-emerged too assault him. The Complainant had earlier seen the attackers at the stage as he waited for a matatu. The assailants hit him and broke his left arm as they stole his Ksh. 20,000 and his safari boots. In a bid to save his life, the Complainant said he pretended to be dead. A torch shone by the attackers also aided him in his identification/recognition. The matter was reported to the police the following day and the Complainant also sought medical attention.
5. About a week later, the police informed the Complainant of arrest of two of his suspected assailants. In a Police Identification Parade involving 10 members, he picked out the two who included the Appellant herein as among his attackers. The Complainant claims that the Appellant had earlier followed him from Greens Place where he was taking drinks, before he and others attacked him on his way back to Likia Market.
6. The record appears to show that the Appellant chose to remain silent when he was offered a chance to present his defence.
7. The learned trial magistrate was satisfied on the evidence adduced before him that the Appellant was among the culprits and accordingly convicted and sentenced him as shown.

Analysis and Determination

8. It seems that only the Prosecution Counsel filed submissions which I have perused. As a first appellate court, I have the duty of reviewing the evidence presented before the lower court and make my own independent conclusions on both issues of fact and law while bearing in mind that I did not watch the demeanour of witnesses (see the Case of Okeno vs Republic (1972) EA 32 and Pandya vs Republic (1957) EA 336).
9. The main issue for determination is whether the Complainant properly identified or recognized the Appellant to have been among his attackers. It is not contested that the Complainant was violently robbed, save that the Appellant denies complicity.
10. It is observed that the incident took place at night but the Complainant, nevertheless, insists that he saw the assailants well and they had followed him before setting upon him. He claims that a torch shone by the assailants further aided him in his identification or recognition. The trial court was told that the complainant knew the Appellant as he previously stole potatoes from him.
11. PW3, a Police Officer based at Likia Police Station, told the court a Cpl Nath Kibibia told him of a robbery suspect who was at a place called Mauche. The Appellant was allegedly identified as the suspect at Mauche by other officers who accompanied PW3 but these Officers did not testify before the trial court.
12. Whereas PW4 (Investigating Officer) stated that the robbery was reported to have been perpetrated by three persons, it is not explained why the Complainant did not name the Appellant if he indeed knew him before the robbery.



13. Moreover, it is not explained why the Police Identification Parade was arranged if the Complainant knew the Appellant and the second attacker with whom he was charged.
14. In *James Okello vs Republic (2022)* eKLR it was observed that sometimes a witness may be mistaken even on identification or recognition of close relatives or friends if the conditions are unfavourable.
15. As per the evidence, the incident took place at night. The complainant told the court that a torch in possession of the robbers assisted in his recognition of the Appellant. It is not, however, shown at who or in which direction vis-a-vis the Appellant the torch was shone. As per the judicial determination in the case of *Warunga vs Republic (1989)* KLR 424, the trial court is required to satisfy itself that the circumstances of identification of the Appellant as the offender were favourable and free from possibility of error. The intensity of any light used for the identification and the position of the light relative to the suspect needed also to have been interrogated by the court (also see case law in *Wandanyi vs Republic (1986)* KLR 1998).
16. As rightly submitted by the Prosecution Counsel citing *Maitanyi vs Republic (1986)* KLR 198, the evidence of a single witness may be sufficient to prove a fact so long as it is credible. Each case is to be considered according to its own facts and circumstances.
17. Section 143 of the *Evidence Act* provides that “no particular number of witnesses shall, in the absence of any provision of law to the contrary, be required for proof of any fact”. It is indeed underscored that the evidence of a single witness may be sufficient to prove guilt (see case law in *Julius Kalewa Mutunga vs Republic* and a Ugandan Court of Appeal case of *Okwang Peter vs Uganda* and Benjamin Mbugua Gitau eKLR vs Republic (2011 among several other superior courts’ decisions). Evidence is not counted but rather it is weighed and therefore the evidence of one witness may be sufficient to convict depending on the strength or credibility of that evidence.
18. The court was not told how long the incident took for it to gauge if the Complainant had sufficient time to identify or recognize the assailants. It is not further explained why it was necessary to conduct a Police Identification Parade when the victim knew two of the suspects including the Appellant as confirmed in court. Such Parades are usually arranged in cases where a witness was not previously known to the suspect but says that he saw the suspect’s physical appearance and could identify him. Could it be that the Complainant herein was not certain of the Appellant’s complicity hence the Identification Parade where he was obviously going to pick him out as a person well known to him? It is further doubtful that the Complainant recognized the Appellant as he didn’t give his name or any other relevant information about him to the Police. His evidence is not therefore credible enough.

Determination

19. Clearly, therefore, the learned trial magistrate did not properly analyze the evidence to ensure that the Appellant’s conviction was without error. The police investigations were also wanting. I find that his conviction was unsafe in the circumstances as the court is unable to affirm that the Complainant spoke the truth implicating the Appellant.
20. The Grounds of Appeal thus succeed. In light of the court’s finding on conviction, it is unnecessary to consider whether or not the sentence imposed against the Appellant was unlawful.
21. The upshot is that the Appeal is allowed and the trial court’s Judgement convicting and sentencing the Appellant is set aside.



22. The Appeal is accordingly allowed and the Appellant ordered set at liberty unless he is otherwise lawfully held.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 28TH DAY OF OCTOBER, 2025.

J. M. NANG'EA, JUDGE.

In the presence of:

Mr Wakasyaka for the DPP

Appellant, present (online)

Court Assistant (Jeniffer)

J. M. NANG'EA, JUDGE.

