



**Moranga v Republic (Criminal Appeal E128 of 2024)  
[2025] KEHC 15157 (KLR) (28 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 15157 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISII  
CRIMINAL APPEAL E128 OF 2024  
JK NG'ARNG'AR, J  
OCTOBER 28, 2025**

**BETWEEN**

**LIVINGSTONE SIGUTI MORANGA ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal from the conviction and sentence of the Chief Magistrate's Court at Ogembo (P.C. Biwott, CM) delivered on 6th December 2024 in Criminal Case (SO) No. E086 of 2023)*

**JUDGMENT**

1. The appellant, Livingston Siguti Moranga faced a raft of offences. On count I, he was charged with the offence of rape contrary to section 3 (1) (a), (b) & (3) of the *Sexual Offences Act*. The particulars of the offence were that on 21<sup>st</sup> June 2023 at around 0000hours at [Particulars withheld] sub-location, Baasi central location, Nyamache sub-county within Kisii county, the appellant intentionally and unlawfully caused his penis to penetrate the vagina of RC by use of force and threats.
2. In the alternative to that count, the appellant was charged with the offence of committing an indecent act with an adult contrary to section 11 (A) of the *Sexual Offences Act*. The particulars of the offence were that on 21<sup>st</sup> June 2023 at around 0000hours at [Particulars withheld] sub-location, Baasi central location, Nyamache sub-county within Kisii county, the appellant intentionally touched the vagina of RC with his penis.
3. The appellant faced a second count of robbery with violence contrary to section 295 as read with section 296 (2) of the Penal Code. The particulars of the offence were that on 21<sup>st</sup> June 2023 at around 0000hours at [Particulars withheld] sub-location, Baasi central location, Nyamache sub-county within Kisii county, while armed with an offensive weapon (knife), robbed RC of her phone make ITEL worth Kshs. 1,500.00 and cash from her MPESA account worth Kshs. 1,600.00 all valued at Kshs. 3,100.00.



4. On count III, the appellant was charged with the offence of threatening to kill contrary to section as read with section 223 (1) of the Penal Code. The particulars of the offence were that on 21<sup>st</sup> June 2023 at around 0000hours at [Particulars withheld] sub-location, Baasi central location, Nyamache sub-county within Kisii county, while armed with a knife, threatened to kill RC after raping her against her will.
5. The appellant was arraigned before the trial court to answer to the charges levelled against him. He entered a plea of 'not guilty' on all counts. After a full trial, the appellant was convicted on count I and II of the offences of rape and robbery with violence. He was sentenced to 20 years and 15 years imprisonment respectively. It is those findings that form the basis of the present appeal.
6. The appellant filed his petition of appeal dated 17<sup>th</sup> December 2024. He raised five grounds disputing the findings of the trial magistrate that are summarized as follows: the trial court erroneously relied on circumstantial evidence incapable of making a finding of guilt; no direct evidence linked him to the offence of rape; the trial court convicted him of the offence of threatening to kill without sufficient evidence (sic); his alibi defence was improperly rejected; and the sentence was harsh. For those reasons, the appellant prayed that the appeal be allowed, the conviction be quashed and the sentence be set aside so that he is set at liberty.
7. The appeal was heard on the strength of the parties' dichotomous written submissions. The appellant filed written submissions dated 2<sup>nd</sup> September 2025. Summarizing the decision of the trial court, he argued that no evidence was adduced by the prosecution to demonstrate how the appellant was arrested; almost one month after the offence had occurred. He contended that no medical evidence tied him to the offence of rape or any of the offences that he was charged with.
8. He highlighted the testimonies of PW1, PW4, PW5 and PW6 to submit that the identification of the perpetrator was not accomplished to the required standard of proof. Other than PW1, the other witnesses never described the suspect. He further questioned the identity of the perpetrator since when the complainant was lodged on 21<sup>st</sup> June 2023 at 0400hours, the complainant did not describe the assailant. Besides, the CCTV surveillance and photographs relied on to bring the suspect to book were not adduced in evidence.
9. The appellant also pointed out that since the stolen items were never recovered from him, no evidence tied him to the offences. He challenged the evidence of PW6 stating that it was not credible. Penultimately, the appellant submitted that there were glaring contradictions and fundamental omissions in the evidence of the prosecution. Finally, he submitted that his defence was not adequately considered by the trial court when it was dismissed as an afterthought since the trial court stated that he ought to have raised it during his plea. He prayed that his appeal be allowed.
10. The respondent opposed the appeal. It filed written submissions dated 14<sup>th</sup> August 2025 through Prosecution Counsel Githere Mwangi. He submitted that all the ingredients to the offence of rape and robbery with violence were proved beyond reasonable doubt. He contended that the appellant was properly identified as the assailant and there was therefore no doubt that he was the offender. On sentence, he submitted that the sentence meted out on both counts was lawful and sufficient. He prayed that the convictions be affirmed and the sentences be upheld.
11. I have considered the submissions, examined the record of appeal and analyzed the law. As a first appellate court, I am duty bound to re-consider, re-valuate and re-analyse the evidence that was before the trial court in order to determine whether, on the basis of those facts, the decision of the trial court is justified. [See *Okeno vs. Republic* (1972) EA 32].



12. The prosecution called eight witnesses in quest to establish that the appellant was guilty of the offences preferred against him. According to the record, PW1 RC the complainant herein, testified that on the midnight of 21<sup>st</sup> June 2023, it was raining heavily. She heard a noise on the roof of her house. She was with her three children. She woke up to investigate. That was when she then saw a person, the appellant herein, trying to enter the house through the roof. He cut the roof of her house to access entry. She was afraid and switched on the lights.
13. PW1 tried to call her husband through his mobile phone but was unreachable. The appellant entered the house and ordered PW1 to keep quiet. She saw him very well because of the lights and got a clear picture of his attributes. She saw his face, clothes and teeth arrangement. The appellant threatened to kill him if she raised an alarm. PW1 opened the door and ran to her neighbour, PW2 Mary Kemunto Mose, in an attempt to flee. The appellant followed her and found her at the neighbour's door as the neighbour didn't open the door. The appellant pulled her away about 200 metres leading to the tearing of her clothes.
14. PW1 was hurt. She told the appellant to spare her life as she had three children. On the command of the appellant, PW1 removed her panty. The appellant then inserted his penis in her vagina and was done a few minutes later. He took PW1's mobile phone after she handed over her MPESA pin number. It had Kshs. 1,605.00. As they walked towards her home, the appellant vanished when they saw PW1's children walking around the house. On reaching the house, PW1 raised an alarm catching the attention of her neighbours.
15. Thereafter, PW1 was taken by her neighbours to Nyamarambe Hospital. She was treated at 1:00 a.m. and thereafter proceeded to the police station. She left her phone number with the police. On investigations, it was discovered that the funds in her MPESA had been withdrawn. She recalled the police visiting the shop where the money was withdrawn. It was in a bar. The police were able to trace the appellant who PW1 identified in three identification parades.
16. PW1 further confirmed that during the ordeal, the appellant was unable to find one of his shoes which he left at the scene. It was recovered at the crime scene by the police officers. She also recalled that the appellant was wearing a black jacket. That he used a sharp object to hive off her roof during the ordeal.
17. PW2 recalled that on 21<sup>st</sup> June 2023, she heard screams outside her door. When she woke up to investigate, she found that there was silence. She went back to sleep. Later, PW1 came to see her. she was naked and alone. She then informed PW1 what had transpired. PW2 called the village elder and escorted PW1 to hospital. In the morning, they found that PW1's roof of her house cut for entry.
18. PW3 Winnie Ondari a clinical officer at Nyamache sub-county Hospital testified that the complainant attended to their facility on 21<sup>st</sup> June 2023. She was treated by her colleague. According to her P3 form, her hymen was absent. Her genitalia were inflamed. The conclusion was that PW1 was raped. She produced the complainant's P3 form and PRC form.
19. PW4 Albert Amboga, manager of The Amazon Villa bar, testified that on 21<sup>st</sup> June 2023 at 1:00 a.m., he was awoken by a lady called Violet. She informed him that a man had paid for a room from PW1's mobile phone number in the bar. The person withdrew Kshs. 500.00 and later Kshs. 1,100.00. He then paid Kshs. 320.00 for drinks and used the balance to pay for a room. He arrived with one shoe and slept in a room called Man u. He left at 6:00 a.m. without his shoe and instead walked away with the slippers from the room.
20. PW4 continued that the owner of the bar was called by Safaricom. The owner explained everything. The police would take view the CCTV surveillance of the bar to trial the suspect. They were able to



- see and identify him. The suspect, who is the appellant, was found at his stage but after he went under. He identified the appellant as the assailant from an identification parade. He stated that though he was asleep at the Chelsea room, he was on duty together with Clinton, Jackline Kerubo, Angeline, Naomi and Sylvia. Jackline was serving the counter while Naomi was in the rooms section.
21. PW5 Jackline Kerubo testified that she worked at the Amazon Villa on the fateful night. A customer came for a room at 0100hours. She was on duty together with Angela, Naomi, Lydia, Valentine and another Lydia. the manager and kitchen boy were in the other room. The customer was wet and was wearing one shoe. He clothes also had mud. He explained that he had been chased by thieves at the factory. He recalled that the customer paid Kshs. 500.00 for a room, cashed Kshs. 780.00 and paid the balance for drinks from the MPESA account of PW1 using the till number.
  22. Expressing dubiousness in the account, the customer explained that PW1 was his wife. The customer cleaned himself and went to sleep. In the morning, the customer left the room with his shoe and panty. He left with their slippers. The bar had CCTV surveillance. PW5 recognized the customer, who was a regular, as the appellant. She recalled the funds being reversed by Safaricom at 1:00 p.m.
  23. PW6 Clinton Maniza testified that he was asleep on 21<sup>st</sup> June 2023 in the Amazon Villa when he heard a knock at the gate. He was employed in the establishment as a cook. The girls on duty then awoke the manager who was in his room. He escorted the manager where they found the customer with on shoe on. The customer explained that thieves had robbed him.
  24. PW6 recalled the customer paying for a room and drinks via the bar's till number. He paid for the services through PW1's mobile number. The customer stated that she was his wife. He slept, woke up and left in the morning with slippers. He left his shoe and boxers behind. He later identified the customer as the appellant in an identification parade.
  25. PW7 IP Peris Kogo from Nyamache Police Station, the investigating officer, received the report on 21<sup>st</sup> June 2023. She visited the scene and found that PW1's roof was open for entry. She then recorded witness statements of the witnesses and conducted her investigations. She invited PW1, PW5 and PW6 for an identification parade. They positively identified the appellant as the perpetrator. PW7 produced the shoe left in crime scene and the other one left in Amazon Villa, a lessa found at the scene, the complainant's MPESA statement, the investigation diary and the appellant's boxers.
  26. PW8 IP Julius Namadi testified that she was asked by PW7 to conduct an identification parade. The appellant was invited to the process and was accompanied by his father Joseph Moranga who stood as his witness. PW8 found seven people who were placed together with the suspect. PW8 called each of the five witnesses one by one to identify the perpetrator. She recalled that PW1 identified the appellant, the perpetrator, by touching him. The appellant was the sixth person in the line.
  27. Next, PW4 identified the appellant as the second person from the left by touch. PW5 identified the appellant by touch standing between the eight and tenth person. The fourth witness, Angeline Moraa identified him as having been placed between the fourth and sixth persons. PW6 was the last person to identify the appellant. He touched him standing as the seventh person. The appellant and his witness expressed satisfaction with the process and signed the parade form together with the other witnesses. It was produced as an exhibit.
  28. For the offence of rape, the following crucial ingredients must be established: penetration, lack of consent, coercion/force to obtain consent and the identity of the perpetrator. For the offence of robbery with violence, any of the following circumstances will prove the offence: if the offender is armed with any dangerous or offensive weapon or instrument; or if he is in company with one or more



- other person or persons; or if at or immediately before, or immediately after the time of the robbery, he wounds, beats, strikes or uses any other violence to any person.
29. The evidence relied on primarily was that of the complainant who testified that on the midnight of 21<sup>st</sup> June 2023, while in her house with her children, she had a noise in her roof. On investigations, she found that the appellant had breached the roof in order to gain access to the house using a sharp object. The fact of her roof being cut open was also confirmed by PW2 and the investigating officer. The complainant switched on the lights and saw the appellant's face clothes and teeth arrangement.
  30. The appellant immediately took charge, ordering the complainant to keep quiet. She was threatened with death if she raised an alarm. Afraid for her safety, the complainant ran to PW2's house seeking for help. However, she was unable to assist her as the appellant immediately grabbed the complainant and dragged her about 200 metres away. Resulting from the drag, the complainant's clothes were torn and, in the process, she was physically hurt.
  31. The complainant pleaded for mercy. Her graphic description was that instead, the appellant sexually assaulted her by putting his penis in her vagina. He then took away her mobile phone after she gave him her MPESA PIN. It had Kshs. 1,605.00. Walking back to the complainant's home, the appellant vanished into thin air on seeing the complainant's children. He left on pair of his shoe at the crime scene.
  32. On obtaining assistance from PW2, the complainant was rushed to Nyamarambe Hospital. According to PW3, the complainant's hymen was absent and her genitalia were inflamed. The conclusion was that she had been raped. The complainant then reported the incident to the police station where PW7 proceeded with the investigations.
  33. The trail of events did not stop there. The appellant proceeded to Amazon Villa at 1:00 a.m. where he withdrew money through the complainant's phone. He was seen by PW4, PW5 and PW6. Concerned with the withdrawals, the appellant explained that the complainant was his wife and he was in possession of her phone. The appellant first withdrew Kshs. 500.00 and later Kshs. 1,100.00. The funds were used to purchase drinks and pay for a room secured in the establishment. The following day, the appellant left his other shoe in the room together with his boxers. During investigations, CCTV surveillance and photographs of the transpirations that night at Amazon Villa were shown to the investigating officer. She also trailed the MPESA transactions which adduced in evidence.
  34. The evidence above created a chain of events so watertight that only a guilty inference could be drawn. The complainant saw the appellant when he broke into her house. She used her bulb light to identify his specific attributes. Shortly thereafter, when the complainant attempted to flee, after being told that she would be killed if she raised an alarm, the appellant caught up with her and raped her. I find that there was no consent in the manner that he sexually assaulted her.
  35. The appellant then stole her mobile phone and used it to make two transactions at the Amazon Villa shortly after committing the offence of rape. He utilized the proceeds for a drink and to sleep in a room. Noticeably, the appellant was muddy explaining that he had been robbed. That explanation was unsubstantiated but proved that he forcibly had sexual intercourse with the complainant. There is no doubt in my mind that the appellant raped the complainant using violence to steal her mobile phone. He also threatened to kill her before committing the offences in case she screamed.
  36. CCTV surveillance and photographs aided the investigation officer to apprehend the appellant. According to PW7, the appellant was seen in the bar as testified by PW4, PW5 and PW6. In her wisdom, the investigating officer called PW8 to conduct an identification parade where the



complainant, PW4, PW5, PW6 and another positively identified the appellant as the perpetrator of the offence.

37. I also find that the identification parade complied with the law and no issues were raised with the process. In fact, the appellant was present with a witness and did not fault how he was identified as the perpetrator. It was therefore immaterial to adduce the footage from the CCTV surveillance. After all, PW4, PW5 and PW6, present on that night at the establishment, testified that they saw the appellant that night.
38. The appellant raised an alibi defence. He stated that he was at home with his wife DW2 while DW3 confirmed that the appellant visited him earlier on. However, I do not find the evidence cogent enough to establish the appellant's whereabouts and cast doubt in the testimony of the prosecution's witnesses. Finally, contrary to the appellant's assertions, I find no glaring contradictions. If any, I find that the same does not qualify the dictates set out in the Court of Appeal case of Richard Munene vs. Republic [2018] eKLR that held as follows:

“It is a settled principle of law however, that it is not every trifling contradiction or inconsistency in the evidence of the prosecution witness that will be fatal to its case. It is only when such inconsistencies or contradictions are substantial and fundamental to the main issues in question and thus necessarily creates some doubt in the mind of the trial court that an accused person will be entitled to benefit from it.”

39. The above evidence captured sufficiently established that the appellant committed the offences of rape and robbery with violence to the required standard of proof. I also find that there was no need to make a conviction finding on the offence of threatening to kill since the appellant threatened to kill the complainant during the robbery. It was an ingredient to the offence of robbery with violence. Had the trial court convicted the appellant, the same would have amounted to double jeopardy. My unwavering conclusion therefore is that the appeal against the conviction lacks merit. It is hereby dismissed. In other words, the convictions are affirmed.
40. On sentence, the trial court sentenced the appellant to 20 years for the offence of robbery with violence and 15 years imprisonment for the offence of rape. Under section 297 (2) of the Penal Code, a person convicted of the offence of robbery with violence shall be sentenced to death. The sentence meted out by the trial court was therefore unlawful. However, since no notice of enhancement was filed, I will not disturb the findings on sentence.
41. For the offence of rape, a person guilty of an offence under this section is liable upon conviction to imprisonment for a term which shall not be less than ten years but which may be enhanced to imprisonment for life. I find that for the offence of rape, the trial court took into account the aggravating facts to sentence him. The appellant threatened to kill her and, in the process, snatched her phone. The appellant also dragged her and instilled fear on the complainant. It is also worthy of note that it was a rainy night where the complainant could have easily been exposed to potential illnesses. He deserves no mercy. I will resultantly not disturb those findings.
42. In view of the foregoing, I find that the appeal on the sentences lack merit. Accordingly, I uphold the sentences.

It is so ordered.

**JUDGEMENT DELIVERED, DATED AND SIGNED VIRTUALLY THIS 28<sup>TH</sup> DAY OF OCTOBER, 2025.**

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**HON JULIUS K. NG'ARNG'AR**

**JUDGE**

Judgement delivered in the presence of:

Siele/Kipchirchir (Court Assistants)

Appellant Present

Koime for the Respondent

