



**Onyango v Republic (Criminal Appeal E048 of 2025)
[2025] KEHC 14901 (KLR) (24 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 14901 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CRIMINAL APPEAL E048 OF 2025
A MABEYA, J
OCTOBER 24, 2025**

BETWEEN

FELIX OCHIENG ONYANGO APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal from the judgment & conviction of Hon. M. Olonyi RM delivered on the 22/4/2025 and sentence passed on the 14/5/2025 in Tamu SPMCCr Case No. E310 of 2024, Republic v Felix Ochieng Onyango)

JUDGMENT

1. The appellant, Felix Ochieng Onyango, was charged on the 18/12/2024 with the offence of robbery with violence contrary to section 295 as read with section 296 [2] of the Penal Code.
2. The particulars of the charge were that, on the 16/12/2024 at around 0015hrs in Ogwedhi village, Koru Location in Muhoroni sub county within Kisumu County, the appellant jointly with others not before court, being armed with a panga, robbed one George Otieno Dinda of his mobile phone make Samsung IMEI No. 353xxx , a lucky free to air decoder, sonar free to air decoder, star times decoder, two aerials and cash all totalling at Kshs. 42,500/- and at immediately before or after the time of such robbery used actual violence by hitting the said George Otieno Dinda on the left side of his head and the right arm using a panga.
3. The appellant also faced two alternative charges of handling stolen property contrary to section 322 [1] as read with section 322 [2] of the Penal Code on the 16th and 17th December 2024, respectively.
4. The appellant pleaded not guilty and a full trial was conducted. The prosecution case was founded on the evidence of four [4] witnesses. The defence was based on the appellant's sworn testimony. In its judgment, the trial court found the appellant guilty and convicted him on the first charge and sentenced him to death.



5. Dissatisfied with that decision, the appellant filed a petition of appeal dated 19/5/2025 raising five grounds of appeal summarised as follows: -
 - a. That the trial court erred in law and in fact in not making a finding that the Constitutional Rights of the appellant were breached hence not a fair trial.
 - b. That the trial court erred in both law and fact on relying on evidence that was full of contradictions thus leading to his conviction where the prosecution failed to prove its case beyond reasonable doubt.
6. The appellant did not file any submissions in support of his appeal but instead elected to rely on the grounds set out in his petition of appeal.
7. On its part, the state submitted that all the ingredients of the offence of robbery with violence were proved beyond reasonable doubt. That there were no contradictions in the evidence presented by the prosecution but that on the contrary, the evidence tendered was reliable, cogent and well corroborated.
8. That there were no procedural errors or any constitutional rights of the appellant being infringed throughout the trial. That the trial court considered the appellant's defence and found the same to be an afterthought and mere denials.
9. This being the first appellate Court, it is incumbent upon it to re-evaluate the evidence afresh and come to its own independent conclusions and findings but at all times considering that it did not see the witnesses testify. [See *Okeno v Republic* [1972] EA 32.]
10. PW1 George Otieno Dinda testified that on the 16/12/2024, whilst in the company of his friend Geoffrey, they proceeded to a fundi's place to repair their respective decoders. That after the decoders were repaired, they patronized a bar where they stayed till midnight when they decided to leave for home. That on their way home, they noticed two individuals pushing a wheelbarrow towards them so he took out his mobile phone, turned on the flashlight and placed it in his right pocket.
11. That as they approached the two individuals, the appellant appeared suddenly from some coffee bushes on his left and slapped him on his left side with a panga. That a fray ensued as the appellant put his hand in PW1's pocket and tried to get his phone. That the other two individuals held him down which prompted Geoffrey to scream whereby the attackers scattered in different directions.
12. That as the attackers ran, he and Geoffrey shone a light at the appellant and could clearly see him. That since they had recognized one of the attackers to be the appellant, they went to sleep having lost the 3 decoders and 2 aerials. That the following day, they proceeded to the appellant's uncle with the wheelbarrow that the appellant's co-assailants had abandoned and established that the contents therein were also stolen.
13. That together with a group of youths they tracked the appellant to his residence and he recovered his phone under the appellant's mattress after which they took the appellant to the police station. That he subsequently went to the hospital for treatment as his left ear had swollen. He later accompanied the police to the appellant's residence where they recovered his two sim cards from the appellant's black jacket that the appellant had worn on the night of the attack.
14. PW2, Geoffrey Otieno Hosea corroborated PW1's testimony and further stated that he clearly saw the appellant hit PW1 with a panga. He reiterated that the night was well lit as there was moonlight and thus he could clearly recognize the appellant. That when they went to arrest the appellant, he attempted to fight them.



15. PW3 Salim Onyango, a clinical officer at Muhoroni County Hospital testified that he examined PW1 on the 17/12/2024, undertaking a comprehensive physical exam and found that PW1 had injuries on his head and arm which injuries were caused by a blunt object.
16. PW4 Fno. 67595 Cpl. William Onuko testified that he was assigned the case on the 17/12/2024. That he was at the police station the previous day when the appellant had been arrested by a mob on allegations of assault and stealing. That he interrogated the appellant and realized that PW1's phone had been recovered from him.
17. Subsequently, in the company of the complainant, they proceeded to the appellant's home where he recovered two sim cards that he confirmed belonged to the complainant. That he prepared an inventory of the things recovered from the appellant which the appellant signed.
18. When placed on his defence, the appellant gave a sworn testimony in which he denied committing the offence. It was his testimony that on the 16/12/2024, he woke up and went to work and that after work at about 2pm, he was at home when he was confronted by a mob of 6 people out of whom he could only recognize one.
19. That the following day one of the persons, George, came to the police station and in the company of the police took him back to his house which he noticed the door was open. That PW1 got into the house and later came out alleging to have found sim cards in his house and he was thereafter arrested.
20. The offence of robbery with violence is a creation of section 296[2] of the Penal Code. The offence is made up of two parts. The first part is the robbery and the other part is the aspect of violence.
21. Robbery is committed when a person steals anything capable of being stolen and immediately before or after the theft, he uses actual violence or threatens to use actual violence on the holder of the thing or the property so as to either obtain or retain the stolen thing or so as to prevent or overcome any resistance thereto.
22. Two things must therefore be proved for the offence of robbery with violence to be established. They are theft and the use of or threat to use actual violence or the perpetrator is in the company of another or others.
23. Robbery with violence is proved if any one of the following three ingredients is also established: -
 - a. The offender is armed with any dangerous or offensive weapon or instrument, or
 - b. The offender is in the company of one or more other person or persons, or
 - c. The offender at or immediately before or immediately after the time of the robbery, wounds, beats, strikes or uses any other personal violence to any person.
24. The appellant contended that his conviction was grounded on evidence marred with contradiction and inconsistencies though he failed to point out the alleged contradictions and inconsistencies.
25. In *MTG v Republic* [Criminal Appeal E067 of 2021] [2022] KEHC 189 [KLR] [15 March 2022] [Judgment] cited with approval *Twehangane Alfred v Uganda*, Crim. App. No 139 of 2001, [2003] UGCA, 6 as follows: -

“With regard to contradictions in the prosecution's case the law as set out in numerous authorities is that grave contradictions unless satisfactorily explained will usually but not necessarily lead to the evidence of a witness being rejected. The court will ignore minor



contradictions unless the court thinks that they point to deliberate untruthfulness or if they do not affect the main substance of the prosecution's case.”

26. In the present case, this Court has subjected the evidence adduced to fresh scrutiny and the Court is unable to find any contradictions or inconsistencies and if at all there were any, the same were not material enough to warrant interference with the conclusions arrived at by the trial court.
27. Having considered the totality of the evidence of the prosecution witnesses, I find the evidence presented by the prosecution witnesses who physically saw the appellant on the material date and time consistent, watertight and believable when put up against the defence offered up by the appellant. PW1 and PW2 were clear in their testimony that they recognized the appellant as one of the assailants. That he is the one who assaulted PW1 during the robbery.
28. From the record, it is clear that in convicting the appellant, the trial court considered the doctrine of recent possession. This is because the evidence led by the prosecution was that sim cards belonging to the appellant were recovered in the appellant's jacket which was recovered in his house.
29. Under our law, the doctrine of recent possession is a principle of circumstantial evidence to the effect that if someone is found in possession of recently stolen property without a reasonable explanation, then a rebuttable presumption can be drawn that they stole the property or received it knowing it was stolen.
30. In *Erick Otieno Arum v Republic* Criminal Appeal 85 Of 2005 [2006] eKLR, the Court of Appeal held: -

“In our view, before a court of law can rely on the doctrine of recent possession as a basis of 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; that property is positively 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 has been stated over and over again, will depend on the easiness with which the stolen property can move from one person to the other.”
31. In the present case, the appellant did not offer any explanation as to how the complainant, PW1 recovered his phone under his mattress. Further, there was no explanation how the two sim cards were recovered from a jacket which PW1 and PW2 testified had seen him wearing on the night of the attack. This, without more, was sufficient to link the appellant with the robbery. In this case, it fortified the identification evidence by PW1 and PW2. It further reinforces the doctrine of recent possession as against the appellant.
32. The other complaint by the appellant was that his constitutional right to a fair trial were breached by the trial court. However, the appellant did not explain or clarify how this breach arose.
33. Article 50 of *the Constitution* provides for the right to a fair hearing. The aforementioned Article goes on to provide the specific rights that constitute a fair trial.
34. In the case of *Anarita Karimi Njeru* [No.1] [1979] 1 KLR 154, the Court of Appeal in orbiter stated that it is not enough to allege constitutional violation but one must be plead the specific violation and proceed to demonstrate the same.
35. The Supreme Court in *Aluochier v Senate & 2 others* [Petition E014 of 2025] [2025] KESC 59 [KLR] [3 October 2025] [Judgment] further complimented the *Anarita* case by stating, inter-alia, that a petitioner has the burden to present evidence showing on a balance of probabilities that the allegations



of constitutional violation are true and factual. In the circumstances of this case, I find that this limb of the appeal lacks merit.

36. I thus find that the appellant's conviction by the trial court was proper. The same is hereby upheld and the appeal lacks merit and is therefore dismissed.

37. It is so ordered.

DATED AND DELIVERED AT KISUMU THIS 24TH DAY OF OCTOBER, 2025.

A. MABEYA, FCI ARB

JUDGE

