



**Sokobe v Republic (Criminal Appeal E083 of 2024)
[2025] KEHC 15127 (KLR) (28 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 15127 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
CRIMINAL APPEAL E083 OF 2024
JK NG'ARNG'AR, J
OCTOBER 28, 2025**

BETWEEN

JOHNSON MARANGA SOKOBE APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal from the conviction and sentence of the Chief Magistrate's Court at Kisii (B.O. Omwansa, SPM) delivered on 29th February 2024 and 14th March 2024 respectively in Criminal Case No. E959 of 2022)

JUDGMENT

1. The appellant Johnson Manga Sokobe faced a raft of offences at the trial court. On count I, he was charged with the offence 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 2nd August 2022 at Nyakwana village Kisii Central sub-county within Kisii County, the appellant robbed LMG Kshs. 4,000.00 cash and phone make Oppo A54 valued at Kshs. 20,800.00 and immediately before the said robbery wounded the said LMG.
2. The appellant was also charged with the offence of rape contrary to section 3 (1) (a) (c) as read with section 3 of the *Sexual offences Act*. The particulars of count II were that on 2nd August 2022 at Nyakwana village in Kisii Central sub-county within Kisii County the appellant intentionally and unlawfully caused his penis to penetrate the vagina of LMG by use of force.
3. Lastly, on count III, the appellant was charged with the offence of grievous harm contrary to section 34 of the Penal Code. The particulars of the offence were that on the same day and in the same place, the appellant did grievous harm to LMG.



4. The appellant was presented to the trial court to take plea. He pleaded not guilty to all counts. After a full trial, the appellant was convicted of the offences of robbery with violence and rape, count I and count II respectively. He was acquitted of the offence of causing grievous harm. He was then sentenced 25 years imprisonment on count I and 15 years imprisonment on count II. Those sentences were ordered to run concurrently.
5. The appellant is aggrieved by those findings. He filed his undated petition of appeal that raised five grounds disputing the findings of the learned magistrate. He lamented that he was convicted of the offences on the basis of shoddy investigations, contradictory evidence and a fabricated medical report. He thus prayed that his appeal be allowed, the conviction be quashed and the sentence be set aside reviewed or reduced.
6. The appeal was disposed of by way of written submissions. The appellant filed his written submissions dated 29th August 2025. He challenged the evidence of PW1 to state that it was unbelievable and raised too many doubts. Therefore, it could not sustain a conviction. Furthermore, the evidence of PW1 and PW2 lacked corroboration thereby lacking in probative value. Finally, the appellant challenged the evidence of the identification parade expressing dissatisfaction in the process.
7. The respondent opposed the appeal. Through Prosecution Counsel Henry Koima, the state filed written submissions dated 25th August 2025. He submitted that the appellant was positively identified as the perpetrator of the offences that he was convicted of. This was further augmented by the identification parade that was lawfully conducted. Turning to the offences the appellant was convicted of, the respondent submitted that the essential ingredients to offences were proved beyond reasonable doubt. Finally, any contradictions apparent were too minor to affect the findings of the trial court. He prayed that his appeal be dismissed.
8. As a first appellate court, it is my bounden duty to re-consider, re-evaluate and re-analyse the evidence that was before the trial court, to determine whether, on the basis of those facts, the decision of the trial court is justified. (See *Okeno vs. Republic* (1972) EA 32). The record before the trial court is as follows: PW1 LMG the complainant testified that on 2nd August 2022, she was walking within Nyakwana area in Matunwa sub-location. That morning, it was raining. The roads also muddy. For this reason, PW1 boarded a motorcycle to go to work at 11:00 a.m. However, due to the muddy state of roads, PW1 was dropped at the bridge. It was at this juncture that PW1 saw the appellant.
9. PW1 greeted the appellant and passed him. He was carrying Nappier grass and a machete. The appellant followed PW1 informing her that he knew of a shortcut. PW1 however did not heed to his advice. Instead, she used the main road. On reaching the waterfall, PW1 stopped to admire it. The appellant was still following her. He told her that the property belonged to his grandfather. Once again, he asked PW1 to allow him to show him a short cut to her place of work. PW1 grew uneasy and walked away.
10. When PW1 declined to look back, she saw the appellant try to kill her with the machete. PW1 got a hold of it with her two hands. Resultantly, she sustained minor defensive cut wounds. The appellant then strangled her, covered her mouth when she screamed and threatened to kill her and cut her into pieces. The appellant then inquired how much money she had to which she said that she had Kshs. 4,000.00. The appellant took that money from her pocket. He then took her phone and MPESA PIN. However, he did not take any money.
11. The appellant looked at PW1. He remarked that she was dressed to lure men (“nimeharibika.”) At this point, she noticed that her right ankle was in pain. He then commanded her to remove her trousers. The appellant threw them away. PW1 asked the appellant to use the condoms that she used to walk



- with, as a community health worker, if he wanted to rape her because she was HIV positive. However, the fact that she was HIV positive was a lie.
12. The appellant removed one condom from her bag. He dressed himself, moved PW1 towards some trees and raped her. The appellant covered her eyes using a sweater. He told PW1 that he was a thug and was ready to die like his mother. After he was done, the appellant removed the used condom and put it back in his pocket. He then took her bag and told her that if she wanted it, she would have to follow him to the shop. PW1 could not walk. He asked the appellant to help her walk. Instead, the appellant left her there.
 13. PW1 crawled towards to the road screaming for help. She caught the attention of some good Samaritan who gave her clothes. She was then assisted by some men to a nearby dispensary. Later, her boss Mr. Allan Monare took her to Oasis Health Centre where she was admitted and examined. She testified that she was bleeding and had vaginal tears. Her right fibula was fractured and her right tibia was dislocated. An ORIF surgery was conducted to repair the fracture. She was also given PEP and emergency pills. She was discharged from hospital on 6th August 2022.
 14. Come 3rd August 2022, PW1's sister informed her that her mobile phone had been traced in a vehicle heading to Eldoret. Two weeks later, she was given a tip off on the whereabouts of the appellant. However, the informant wanted money. PW1 asked the person to share pictures. Later the appellant called her and asked her to check her Facebook. She saw that the appellant had sent him a friend request. She recognized his face. PW1 asked him to send a picture of him with a machete on his neck via WhatsApp. Thereafter, PW1 blocked him and sent the material to the police.
 15. PW1 testified that her boss initially reported the matter on 2nd August 2022 but also reported the matter at Kiogoro police station on 8th August 2022. The doctors filled a P3 form that was issued to her by the police. When the appellant was arrested in September 2022, PW1 was called to the police station for an identification parade. She was placed in a waiting room before the exercise was conducted. She was not allowed to see anyone before the identification parade took place. She was then called to a place where there was a lineup of 5 - 7 persons. She was asked to identify the appellant. The parade was done 3 times and at all times, the appellant's position was changed severally. She pointed out the appellant by touching him with her crutches.
 16. PW2 Daniel Nyameino a senior clinician working at Kisii Teaching and Referral Hospital examined the complainant on 17th August 2022. After collecting her history, he noticed that the complainant was using crutches to walk. She had a healing surgical wound on the lower end of the right leg with stitches in situ. He confirmed that she had sustained a fracture of the lower end of the right fibula forming part of the ankle joint which was also dislocated. A check x-ray revealed that she had undergone ORIF with metal plates. The injuries were two weeks old.
 17. PW2 also saw from her treatment notes that PW1 had been sexually assaulted. She had vaginal lacerations. His conclusion was that the possible weapon that inflicted the injures on her private parts was a blunt object and an erect penis. The injuries, in his opinion, were consistent with vaginal penetration. He classified the injuries that PW1 sustained as grievous harm. He also confirmed that she was admitted in Oasis Hospital from 2nd August 2022 to 5th August 2022. She was also administered with emergency contraceptives and PEP. Finally, PW2 confirmed that the injuries sustained would heal well with no permanent disfigurement if managed well. He produced the x-ray films, medical report, P3 form and receipts in evidence.
 18. PW3 PC Geko Kiboi was the investigating officer. He confirmed that he received the complaint on 8th August 2022. He took the statement of the complainant, interrogated the witnesses, gathered the



evidence and recorded witness statements. Using the pictures submitted by PW1 to them, PW3 was able to inform area residents who the culprit was. The appellant was then arrested by community policing members and taken to Ibeno police station. Upon his arrest, the appellant claimed that the victim was his girlfriend. Thereafter, an identification parade was conducted where PW1 positively identified the appellant as the assailant.

19. PW4 IP Isaac Osman Abdul conducted the identification parade on 11th January 2022. The exercise took place at Kiogoro police station between 1:00 p.m. and 3:00 p.m. PW4 gathered eight young male persons in close appearance to the appellant. PW4 conducted the identification parade thrice. On the first time, the appellant was placed between the 2nd and 4th persons. The second time, he was placed between the 5th and 7th persons while during the third exercise, he was placed between the 4th and 6th persons. He confirmed that the appellant was identified by means of touch. The appellant neither objected to the exercise nor failed to invite a friend or advocate to be present. The identification parade form was produced in evidence.
20. At the close of the prosecution's case, the trial court found that the prosecution has established a prima facie case against the appellant. He was placed on his defence. His sworn evidence was that on 9th October 2022, he was herding coffee when he was informed by his cousin that members of the public were looking for him. At 8:00 p.m., he was accosted by people in his house. He was hit on the head with a club and was frog marched to the road. They accused him of sexually abusing girls at the river. He was beaten mercilessly and taken to Ibeno police station and later to Kiogoro police station.
21. The following day, the appellant was asked by the inspector to carry water for a distance of about 100m at 5:00 a.m. He saw the complainant accompanied by two men and women. He was then taken back to the cells until 11:30 p.m. for an identification parade exercise. The complainant touched him at the stomach during the exercise where he lined up with other men three times. He then signed some forms and went back to the cells until he was arraigned in court. He stated that he did not commit the offence that he had been charged with.
22. The appellant was on count I charged with the offence of robbery with violence. Under section 296 (2) of the Penal Code robbery with violence is committed in any of the following circumstances: the offender is armed with any dangerous or offensive weapon or instrument; or the offender is in company with one or more other person or persons or 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.
23. PW1 was the sole witness to the crimes committed against her. Her evidence was that she was walking to work on the morning of 2nd August 2022 when she met her assailant. It was the appellant. At the initial stages of their conversation, PW1 was lured by the appellant into taking a different route to her place of work because all roads were muddy and appeared impassable. When that strategy did not work, the appellant took his machete and tried to hit PW1 with it. PW1 shielded herself sustaining minor cut wounds. The appellant then strangled her, covered her mouth and threatened to kill her if she raised an alarm. He then took away Kshs. 4,000.00 and PW1's mobile phone, both in her possession.
24. I wish to state that during her testimony, that was subjected to cross examination, the evidence of PW1 was unwavering. She appeared deliberate with the truth and I find no gaps in her evidence to cast doubt on the series of unfortunate events that befell her.
25. From the evidence reproduced, I find that indeed PW1 was descended upon with a machete and sustained injuries. Before her mobile phone and Kshs. 4,000.00 cash were taken, PW1 was threatened with death in the event that she raised an alarm. Thus, on two limbs, it was established that the offender was armed with a dangerous and offensive weapon, namely the machete. Furthermore, immediately



- before her items were snatched away from her, she was struck with the machete. She also sustained a fracture and dislocation of her lower limb before she was raped.
26. The appellant was also charged with the offence of rape contrary to section 3 of the *Sexual offences Act*. Under subsection 1, a person commits the offence termed rape if he or she intentionally and unlawfully commits an act which causes penetration with his or her genital organs; the other person does not consent to the penetration; or the consent is obtained by force or by means of threats or intimidation of any kind.
 27. According to PW1, after taking her belongings, the appellant looked at PW1 remarking that she was dressed to lure men (“nimeharibika.”) At this point, she noticed that her right ankle was in pain. He then commanded her to remove her trousers. The appellant threw them away. PW1 asked the appellant to use the condoms that she used to walk with, as a community health worker, if he wanted to rape her because she was HIV positive. However, the fact that she was HIV positive was a lie.
 28. The appellant removed one condom from her bag. He dressed himself, moved PW1 towards some trees and raped her. The appellant covered her eyes using a sweater. He told PW1 that he was a thug and was ready to die like his mother. After he was done, the appellant removed the used condom and put it back in his pocket. He then took her bag and told her that if she wanted it, she would have to follow him to the shop. PW1 could not walk. He asked the appellant to help her walk. Instead, the appellant left her there.
 29. PW1 crawled towards to the road screaming for help. She caught the attention of some good Samaritan who gave her clothes. She was then assisted by some men to a nearby dispensary. Later, her boss Mr. Allan Monare took her to Oasis Health Centre where she was admitted and examined. She testified that she was bleeding and had vaginal tears. Her right fibula was fractured and her right tibia was dislocated. An ORIF surgery was conducted to repair the fracture. She was also given PEP and emergency pills. She was discharged from hospital on 6th August 2022. Her medical evidence was positively corroborated by PW2, a clinician.
 30. Gathered from the above, the appellant unlawfully and intentionally caused penetration with his genital organs to PW1’s genital organs. He was certainly deliberate to have his way with her when he took a condom from PW1’s bag, wore it and had non-consensual intercourse with her. To save face, the appellant then carried the condom as a show of how deliberate he was in committing this heinous act. It is also apparent that the complainant was not agreeable to the intercourse. This would make sense as to why the appellant elected to cover her with a sweater during the ordeal.
 31. What is more heart wrenching is that the appellant bragged that he was a thug when he was raping the complainant. This was a show of intimidation of a victim, who might I add, had already sustained injuries on her hand and was dealing with a dislocated and fractured leg. The medical report further revealed that the complainant suffered vaginal lacerations, a sign of penetration. She crawled to the road to obtain help since she had also suffered fracture injuries.
 32. It was apparent that the appellant was a person not known to complainant prior to the incidents. Thus, in the wisdom of the prosecution, an identification parade was conducted. PW1 testified that she never saw the appellant at the police cells and only identified her with her catch on three occasions when the identification parade took place. The appellant executed the identification parade form; indicative that he was satisfied with the manner it was conducted. The allegation that he was seen fetching water by the complainant prior to the parade is in my view an afterthought.
 33. The evidence above is clear that the appellant committed the offence of robbery with violence and rape as convicted by the trial court. He was properly and positively identified by the complainant. It



is important to add that the said offences occurred during the day when there was no case of mistaken identity. The identification parade was conducted and the complainant recalled the culprit sending him a friend request on Facebook and sharing a picture of himself holding a machete on his neck via WhatsApp.

34. On count III, the appellant was acquitted of the offence of grievous harm. Grievous harm is defined in the Penal Code to mean any harm which amounts to a maim or dangerous harm, or seriously or permanently injures health, or which is likely so to injure health, or which extends to permanent disfigurement, or to any permanent or serious injury to any external or internal organ, membrane or sense. From that definition, I find that the trial court was correct to find that the offence was not proved beyond reasonable doubt. It was established at trial by PW2 that the injuries that had been sustained by the complainant would heal if managed well with no permanent disfigurement. It was therefore proper for the trial court to acquit the appellant on this offence.
35. In the end, I find that the prosecution proved beyond reasonable doubt that the appellant committed the offences of robbery with violence and rape. His appeal on conviction therefore lacks merit and it is hereby dismissed.
36. The appellant was sentenced to 25 years imprisonment on count I and 15 years imprisonment on count II. Under section 296 (2), the offence of robbery with violence carries a mandatory sentence of death. Thus, I find that the sentence of 25 years is illegal. However, the prosecution failed to file a notice of enhancement challenging the illegality of that sentence. Accordingly, the appeal on sentence on count I lacks merit and is hereby dismissed.
37. On count II, the offence of rape, section 3 (3) of the *Sexual Offences Act* provides that a person guilty of the offence shall be sentenced to ten years imprisonment but may be enhanced to life imprisonment. The trial court properly exercised his discretion to sentence the appellant to 15 years. I find that the trial court considered the aggravating factors to enhance sentence. This is because the complainant suffered a dislocation and a fracture and was also robbed off her belongings over and above being raped. In my view in fact, and taking into account the circumstances of the offence, that sentence was lenient. Accordingly, I dismiss the appeal on sentence on count II as well.

It is so ordered.

JUDGEMENT DELIVERED, DATED AND SIGNED VIRTUALLY THIS 28TH DAY OF OCTOBER, 2025.

HON JULIUS K. NG'ARNG'AR

JUDGE

Judgement delivered in the presence of:

Siele/Kipchirchir (Court Assistants)

Appellant Present

Koime for the Respondent

