

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KIBERA
CRIMINAL APPEAL NO. E046 OF 2025

RONALD OCHIENG ADOH.....
.....APPELLANT

VERSUS

REPUBLIC.....
.....RESPONDENT

(Being an appeal against the original conviction and sentence delivered by Hon. Z. Abdul (P.M) on 20TH March 2025 at Kibera Chief Magistrate's Court, Criminal Case No. E.452 of 2024 Republic vs Donald Ochieng Adoh)

JUDGEMENT

- 1.The appellant was charged and after a full trial convicted for the offence of robbery with violence on count I, contrary to section 296(2) of the Penal Code. He was sentenced to serve forty-five (45) years imprisonment.
- 2.Aggrieved, he filed the present appeal challenging his conviction and sentence. In his petition of appeal, he challenged the totality of the prosecution's evidence against which he was convicted. He complained that the sentence imposed was unlawful. He urged the court to quash his conviction and set aside the sentence imposed.
- 3.This being a first appeal, it is the duty of this court as the first appellate court, to reconsider, re-evaluate, and re-analyse the evidence afresh and come to its conclusion on that evidence. The court should however bear in mind that it did not see witnesses testify and give due consideration for that. (See **Okeno v Republic [1972] EA 32**).
- 4.The prosecution called eight witnesses in support of its case. PW1, Peter Ochieng, a caretaker and security guard at Forest View

Estate, testified that on 22nd February 2024 at approximately 3:00 am, he noticed some windows open while on patrol. He encountered the appellant at the front of the premises, who was armed with a knife. The appellant cut PW1 on the forehead and the right side of the head. PW1 struck back with a piece of wood, injuring the appellant on the head and back. During the struggle, the appellant attempted to stab PW1 in the neck, but PW1 evaded and escaped, scaling the compound wall and reaching the neighbouring prison compound, alerting neighbours who took him to hospital. PW1 positively identified the appellant by his clothing, and a bag was recovered. He noted that the appellant was accompanied by an accomplice who escaped with a laptop and two phones.

5. PW2, Winnie Wangui Kagiri, corroborated PW1, stating she observed someone in blue trousers with white stripes jumping over the fence, leaving behind a knife and SIM cards. PW1 was bleeding and had sustained injuries. Two phones and laptops were missing, though a laptop and other items were recovered. She identified the appellant when brought by neighbours and prison officers.
6. PW3, Beatrice Mwelu Mwatika, the house help, confirmed the open window and door and corroborated the struggle witnessed by PW1. PW4, Justus Musya, a prison warden, arrested the appellant, recovered a phone, and confirmed the appellant had left the knife used in the assault. PW5, Dr Kamau Mariga, medical officer, produced a P3 Form documenting laceration on PW1's forehead classified as harm.
7. PW6, PC Joseph Kigari Gatheca, documented blood stains and fingerprints at the scene. PW7, Margaret Wahu Maina,

government analyst, prepared DNA analysis confirming no match between the appellant's buccal swab and certain items collected. PW8, PC Enoch Tirop, the investigating officer, corroborated prior testimonies and confirmed PW1's blood was on items collected from the scene.

8. In defence, DW1, Ronald Ochieng Odoh, stated he saw a man running and being chased and was later taken to the crime scene and police station, where his clothes were seized.
9. The appeal was canvassed by way of written submissions by the parties, which have been duly considered. The key ingredients for a robbery with violence charge are found in section 296(2) of the Penal Code. It provides as follows-

“if the offender is armed with any dangerous or offensive weapon or instrument, or 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 personal violence to any person, he shall be sentenced to death”.

10. The first element of robbery with violence is theft. PW1 testified that the appellant stole a laptop and three pairs of shoes. This was corroborated by PW2 and PW3, who confirmed seeing the appellant at the scene.
11. The second element is the use or threat of violence at or immediately before or after the theft. PW1 stated that the appellant was armed with a knife and cut his forehead and the right side of his head. The P3 Form produced by PW5, the medical officer, confirmed forehead lacerations that were stitched, with

the degree of injury assessed as harm, establishing the use of actual violence in direct connection with the theft.

12. The third element is the presence of more than one person during the commission of the offence. PW1 testified that the appellant was accompanied by an accomplice who escaped. This evidence was undisputed, establishing that the robbery involved more than one perpetrator.

13. The final element is the positive identification of the offender. PW1 identified the appellant as the person who stabbed him. PW2, PW3, and PW4 corroborated his presence at the scene, reinforcing the reliability of the identification.

14. The appellant denied involvement and claimed mistaken identity. However, this defence did not undermine the clear and consistent evidence linking him to the offence.

15. In conclusion, the prosecution proved beyond reasonable doubt all the statutory elements of robbery with violence under section 296(2) of the Penal Code: theft, the use of a dangerous weapon, application of force, and positive identification of the appellant. The evidence, comprising credible witness testimony, medical reports, and corroborative forensic findings, leaves no doubt that the appellant committed a violent and premeditated robbery. The conviction of the trial court was proper and is accordingly upheld.

16. The appellant was sentenced to forty-five (45) years' imprisonment, with the court taking into account the pre-sentence report and the aggravating circumstances of the offence.

17. Sentences are intended not only to punish but also to rehabilitate offenders and encourage law-abiding behaviour. In this case, the appellant is a first-time offender. Considering this factor, the

sentence imposed is excessive and does not adequately reflect the principles of proportionality, rehabilitation and mitigation.

18. Accordingly, the sentence of forty-five (45) years is set aside and substituted with twenty-five (25) years' imprisonment. The substituted sentence shall run from 22nd February 2024, the date of the appellant's arrest, pursuant to section 333(2) of the Criminal Procedure Code, Cap 75.

Orders accordingly.

**Judgement dated and delivered virtually this 26th
November 2025**

**D. KAVEDZA
JUDGE**

In the presence of:

Appellant Present

Mutuma for the Respondent

Karimi Court Assistant.