

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU
(CORAM: R. MWONGO, J.)
CRIMINAL APPEAL NO. E101 OF 2024

FREDRICK NJIRU.....APPELLANT

-VERSUS-

REPUBLIC.....RESPONDENT

*(Appeal arising from the decision of Hon. S. K. Ngii in Siakago MCCR E144 of 2023
delivered on 03rd December 2024)*

JUDGMENT

Background

1. The appellant was charged with the following offences amongst others:

- 1) 2nd count: threatening to kill contrary to section 223(1) of the Penal Code. The particulars were that on 20th October 2022 at Gachoka area in Mbeere South subcounty within Embu County, without lawful cause, the appellant uttered the words “*wewe Macharia hapo sio mashamba ya wakikuyu. Tutakuua na tukung’oe kwa hii mashamba*” while armed with a panga.
- 2) 3rd count: willfully obstructing police officers in due execution of police officers’ duties contrary to section 103(a) of the National Police Service Act No. 11A of 2011. Particulars were that on 20th October 2022 at Gachoka area in Mbeere South subcounty within Embu County, the appellant with others not before court, while armed with pangas, willfully and unlawfully obstructed No.57330 CPL Ezekiel Koech and PC Kennedy Kiragu while in due execution of police duties of scene visiting.

2. He pleaded not guilty and the plea was duly entered before the case was heard. Eventually, he was convicted on these 2 counts. He was sentenced to pay a fine of Kshs.200,000/-, or in default 2 years imprisonment for the 2nd count; and a fine of Kshs.100,000/- or in default 1 year imprisonment for the 3rd count.

The Appeal

3. Being dissatisfied with the findings of the trial court, the appellant filed a petition of appeal dated 18th December 2024, challenging the judgment of the trial court. He

prayed that the conviction by the trial court be set aside. The appeal is premised on grounds that:

- 1) The Honourable Principal Magistrate erred in law and fact in convicting the Appellant against the weight of the evidence produced;
- 2) The Honourable Principal Magistrate erred in law in holding that the prosecution had proved their case beyond reasonable doubt;
- 3) The Honourable Principal Magistrate erred in law and fact in holding that the prosecution had proved beyond reasonable doubt the ingredients of threatening to kill and obstructing a police officer;
- 4) The Honourable Principal Magistrate erred in law and fact in holding that the evidence of 'Alibi' by the Appellant was untruthful and insufficient;
- 5) The conviction of the Appellant was arrived at without support of evidence and against the law;
- 6) The Honourable Principal Magistrate failed to consider the defence and defence witnesses' evidence;
- 7) The Honourable Principal Magistrate failed to consider the circumstances of the alleged scene of the crime and the fact that the prosecution of the Accused Person was discriminatory; and
- 8) The Honourable Principal Magistrate erred in law and fact in considering the prosecution evidence that lacked independence and was selective against the independent evidence of the Appellant.

Summary of the Evidence in the trial court

4. PW1 was Joseph Macharia, the complainant, who stated that he was in the process of fencing his land. He was approached by 4 individuals who were armed with pangas. One of the people was the appellant who threatened to kill him using the words, "*you Macharia I have come for you and I will kill you today*". The appellant told him that he did not own any land there since Kikuyus did not have any land in that area. He told the appellant that he had bought the land from Mati but the appellant continued to move near him while wielding his panga.
5. As the appellant continued approaching him, he retreated tactfully. He then went to report the matter at Gachoka Police Station. Police officers visited the scene the following day and as they approached the place, they saw the appellant amongst other people on the land where the altercation had occurred the previous day. The

police officers went to the scene but the appellant tackled them and tried to stop them from reaching the place. The appellant also threatened to disarm the police officers and shoot them since he, too, was an ex-police officer.

6. According to PW1, the officers managed to maneuver around the obstruction, but the appellant went on to grab him (PW1) by his shirt and continued threatening him. He also threatened to burn his tractor and ordered his accomplices to do it. However, the tractor driver turned it around to leave. He produced copies of the title deeds of his properties to the police. In cross-examination, he stated that he reported the incident to the police on the same day but the police visited the scene the following day. He stated that it was the appellant who threatened to kill him and he also ordered his accomplices to kill him.
7. PW2 was David Musyoka Ngari who was with PW1 on the day of the incident. He stated that he had been hired by PW1 to help with splitting poles that would be used for fencing his land. While they were working, the appellant emerged with 3 other people. The appellant threatened PW1, telling him that he would kill him and that he had no land there. They then left the appellant and his accomplices on the farm and went away.
8. The following day, they returned with PW1 and police officers and they found the appellant at the scene again with a group of people who were armed with pangas. The appellant manhandled the unarmed police officer and threatened to disarm the armed police officer and use his firearm to shoot him and PW1. The appellant ordered his accomplices to burn down PW1's tractor but they didn't do it. He was able to identify the appellant; but the other people were unknown to him. On cross-examination, he stated that the appellant was the one who confronted PW1 and the police officers
9. PW3 was Benson Mugo Muraguri who stated that he was also at the scene when the appellant threatened to kill PW1. The appellant and his 3 accomplices were armed with pangas, and when the confrontation started, PW1 advised them to follow him and leave the property. He was also present when they returned the following day with police officers. They found the appellant there with a bigger crowd.
10. The appellant threatened to take one of the police officer's firearm and use it to kill him and PW1. He also threatened to burn down PW1's tractor. On cross-examination, he stated that he did not know of any meetings about PW1's land and

its ownership. That he did not see any physical altercation between the appellant and the police officers. He stated that the appellant and PW1 had a long-standing disagreement over the position of wells.

11. PW4 was Michael Kinuthia, a land surveyor who was hired to prepare a report regarding trees that had been cut down at the scene. His testimony concerns the 1st count for which the appellant was acquitted, and he same is not relevant in this appeal.
12. PW5 was Ezekiel Maganda whose testimony also relates to the 1st count for which the appellant was acquitted. Similarly, his testimony is not relevant in this appeal either.
13. PW6 was PC Kennedy Kiragu, formerly of Gachoka Police Station. He stated that when the incident was reported, he visited the scene alongside his colleague Cpl. Koech and PW1. He was in uniform and armed while his colleague was not armed. When they arrived at the scene, they found a group of about 15 people armed with pangas, jembes and forked jembes, who stopped them from accessing the scene. The police officers introduced themselves and then the appellant threatened to disarm him and use his firearm to kill them. He recalled the appellant well because he was the one threatening to kill them. PW1's tractor was also at the scene. None of the police officers were attacked at the scene but he was threatened by the appellant
14. PW7 was CIP Sarah Bokosh who processed the crime scene and produced photographic evidence relating to the 1st count.
15. PW8 was PC Samuel Wanjora who stated that the incident was reported at the police station and 2 police officers were deployed the following day to visit the scene. The officers returned about 20 minutes later and reported that they could not access the scene because they had been blocked by some armed men. He was tasked with investigating this disruption together with the allegations of threats to kill PW1 who produced copies of his title deed. He stated that he recorded witness statements from the witnesses and the appellant and his accomplices were arrested in connection with the offences.
16. PW8 produced the copies of title deed and official searches done as evidence. He also produced a witness statement by one of the eye witnesses who could not be called to testify as he was bedeviled by a mental illness. He also had a sketch map of the scene which was produced as evidence. On cross-examination, he stated that

there were armed men at the scene who tried to stop the police from accessing the scene. He stated that at the time of arresting of the appellant, he (the appellant) was facing 3 other charges in a different court.

17. DW1 was the appellant, who stated that on the day of the alleged incident, he was at his farm watering miraa when he heard his sister-in-law calling out for help. When he went to her farm, he found people leaving and they told him that PW1 was fencing off her land. He did not get involved but the following day, he went back to his farm to harvest miraa and take it to the market. After this errand, he met a group of people coming from the direction of his sister-in-law's farm. They told him that the stream passing through the 2 pieces of land was the boundary but PW1 wanted more land than he should own.

18. DW1 stated that he still did not get involved, neither did he reach the scene. He denied obstructing the police from the scene or threatening anyone. It was his evidence that he saw PW1 for the first time in court. He stated that he had reported to the police that PW1 was encroaching on his land but the police arrested him (DW1). His boundary dispute with PW1 is pending determination in court. He also produced minutes of a meeting held in an attempt to resolve land disputes between residents of Mbeti and Kiamuringa. On cross-examination, he stated that his land does not border PW1's land but PW1 had encroached onto his neighbour's land until he had reached DW1's land. He denied threatening to kill PW1 while armed.

Parties' Submissions on Appeal

19. The appellant, in his submissions, relied on **Nyamai v Republic [2024] KEHC 2166 (KLR)**, **Wekesa v Republic [2024] KEHC 1559 (KLR)** and **Republic v Stephen & another [2023] KEHC 18291 (KLR)** in support of his arguments that the trial court erred in reaching a finding against the weight of the evidence adduced. It was his case that the prosecution did not prove its case against him to the required standard. That the trial court did not give reasons for the finding reached considering that he raised alibi defense. He urged the court to allow the appeal and quash the conviction. In the alternative, he urged the court to refer the matter for retrial.

20. The respondent submitted that the evidence adduced supported the offences he was charged with. It relied on section 223(1) of the Penal Code and Section 103(a) of the National Police Service Act.

Issue for determination

21. The issues for determination is whether the 2 counts were proved beyond reasonable doubt.

Analysis and Determination

22. This appellate court is tasked with re-examining the evidence adduced at trial and coming up with its own findings, keeping in mind the advantage that the trial magistrate had in assessing the witnesses firsthand. In the renowned case of **Okeno v. Republic [1972] EA 32**, the Court of Appeal set out the duties of a first appellate court as follows:

“An Appellant on a first appeal is entitled to expect the evidence as a whole to be submitted to a fresh and exhaustive examination (Pandya v Republic (1957) EA. 336) and the appellate court’s own decision on the evidence. The first appellate court must itself weigh conflicting evidence and draw its own conclusion. (Shantilal M. Ruwala v R. (1957) EA. 570). It is not the function of a first appellate court merely to scrutinize the evidence to see if there was some evidence to support the lower court’s finding and conclusion; it must make its own findings and draw its own conclusions. Only then can it decide whether the magistrate’s findings should be supported. In doing so, it should make allowance for the fact that the trial court has had the advantage of hearing and seeing the witnesses, see Peters v Sunday Post [1958] E.A 424.”

23. Section 223(1) of the Penal Code provides;

“Any person who without lawful excuse utters, or directly or indirectly causes any person to receive, a threat, whether in writing or not, to kill any person is guilty of a felony and is liable to imprisonment for ten years.”

24. According to this provision, a threat to kill becomes a felony when any person;

- 1) Unlawfully utters a threat to kill another; or
- 2) Causes any person to receive a threat to kill, whether written or not.

25. In his testimony, PW1 stated that the appellant uttered the words “*you Macharia I have come for you and I will kill you today*” referring to him. The words were uttered in the audience of PW2 and PW3. In his defense, the appellant simply denied having threatened PW1. It emerged that there was a long-standing land dispute involving the neighbours of PW1 and the appellant testified that PW1 had been encroaching on his neighbour’s land until he reached his land. PW1 and DW1 are not immediate neighbours but it was DW1’s testimony that PW1 wanted to take his land. DW1 said that he had heard of PW1 but he had never met him until the day they were both summoned to the police station.
26. PW1, PW2 and PW3 corroborated the evidence that the appellant had uttered the threatening words to PW1 on 19/10/2022. In their cross examination, their evidence was unshaken. The cross examination did not raise any questions suggestive of the fact that the accused was not present or had an alibi.
27. Similarly, the evidence of PW1, PW2 and PW3 concerning the events of 20/10/2022 when they went to PW1’s land with the Police Officers is virtually corroborative. All of them stated that they saw and heard the accused tell the police officers he would disarm them. PW3 did not see any physical scuffle between the accused and his team with the police officers. However, PW1 & PW2 testified that the accused threatened to disarm the police officers and “tried to rough up Kiragu” one of the policemen, in the words of PW1; In the words of PW2 he said, “I saw Njiru (accused) confront the unarmed police officer. He threw him aside. He approached the officer who was armed and threatened to disarm and shoot him...”
28. PW6 PC Kiragu testified that he was armed whilst his colleague Corporal Koech was not. PW6 testified that the accused threatened to snatch his gun and kill him. Their objective was to visit a scene where malicious damage was reported to have occurred. After the confrontation with the accused and his gang, PW6 said “We ... left the scene. We did not execute our mission”.
29. The standard of proof is beyond reasonable doubt. This evidence proves beyond reasonable doubt that the appellant threatened to kill PW1.
30. In the case of the offence under section 103(a) of the National Police Service Act, it appears thus:

“Any person who assaults, resists or willfully obstructs a police officer in the due execution of the police officer's duties commits an offence

and shall be liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding ten years, or to both.”

31. As already noted, PW6 testified that following the report, he went to the scene with his colleague and PW1. He said that they could not access the scene as they were obstructed by a group of armed civilians. The appellant who was leading the group, threatened to disarm PW6 and use his firearm to shoot him and PW1. This testimony was corroborated by PW1, PW2 and PW3 who were at the scene. PW8 testified that after the police officers had been obstructed from reaching the scene, they returned to the police station and reported the incident.
32. In his defense, the appellant stated that he did not go to the scene and he denied threatening anyone. His defence was considered by the learned trial Magistrate and rejected. However, the totality of the evidence points to the appellant as the perpetrator of the offences.
33. In light of the foregoing, I am not persuaded in the least to disturb the findings of the trial Court. Accordingly, I dismiss the appeal and affirm the convictions and sentences meted.
34. Orders accordingly.

Delivered electronically, dated and signed at Embu High Court this 19th day of November, 2025, pursuant to notices issued on 10th November and 12th November, 2025 as to electronic delivery.

**R. MWONGO
JUDGE**