



REPUBLIC OF KENYA



KENYA LAW
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**Oloo v Republic (Criminal Appeal E076 of 2025)
[2025] KEHC 17370 (KLR) (26 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 17370 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL E076 OF 2025
DR KAVEDZA, J
NOVEMBER 26, 2025**

BETWEEN

EMMANUEL BARACK OLOO APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal against the original conviction and sentence delivered by
Hon. Kabuya I.M (SPM) on 8th May 2025 at Kibera Chief Magistrate's
Court Criminal Case No. E556 of 2024 Republic vs Emmanuel Barack Oloo)*

JUDGMENT

1. The appellant was charged and after a full trial convicted for the offence of robbery with violence contrary to section 296(2) of the Penal Code. He was sentenced to serve three (3) years imprisonment.
2. Aggrieved, he filed this appeal challenging both conviction and sentence. In his petition dated 28th May 2025, the appellant challenged the totality of the prosecution's evidence against which he was convicted. He complained that the trial court failed to consider his defence. 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 own 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 four (4) witnesses in support of their case. Terry Mueni Mutisya, PW1, stated that she was jogging along the road when she encountered the appellant. He drew a panga from his coat, causing her to panic and attempt to defend herself. She was overpowered. The appellant then ordered her to transfer Kshs 500 via M-Pesa to 0769362599, which she did. He next directed her into



a nearby thicket. She resisted, and a struggle followed. The mask he was wearing fell off during the struggle. Her phone fell, and the appellant picked it up and fled.

5. PW1 sought treatment at Karen Hospital, then reported the matter at Langata Police Station. Investigations were assigned to No. 233722 PC Tirop (PW4). Safaricom records showed that the M-Pesa recipient number belonged to the appellant's mother. PW1 later underwent examination by a police surgeon on 17 July 2023. The P3 noted tenderness on the forehead, shoulder, wrist and pelvic area.
6. PW1 stated that the attack took place at sunset and that she saw the appellant clearly after his face mask fell. She said the panga was blunt, explaining the relatively mild injuries. She expressed confidence in her identification despite the time lapse.
7. PW2, Dr Kamau Mariga, the police surgeon, testified that the complainant suffered bruises and tenderness on the forehead and jaw region, right shoulder tenderness, and tenderness on the wrist and leg. The likely cause of the injuries was both blunt and sharp force, and he classified them as harm.
8. PW3, IP Gitau, testified that the appellant was arrested on 20 February 2024. He conducted an identification parade on 1 March 2024, during which PW1 positively identified the appellant. PW3 stated that the parade followed proper procedure and that the appellant consented to participate.
9. The investigating officer, PW4, confirmed that he conducted investigations, recorded witness statements and received Safaricom data linking the M-Pesa number to the appellant's mother.
10. When put on his defence, the appellant gave sworn testimony. He denied involvement and claimed he first saw PW1 at the police station. He alleged that the identification parade was flawed and that he was forced to participate. He stated he was arrested while attending another criminal matter at Milimani. He argued mistaken identity, noting that the weapon was not recovered. In cross-examination, he conceded that PW1 had no known motive to frame him.
11. The appellant was charged with robbery with violence contrary to section 296(2) of the Penal Code, which provides:

“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.”
12. To sustain a conviction, the prosecution must prove robbery and at least one of the elements set out in section 296(2). The evidence is assessed against each element.
13. It was the evidence of PW1 she was compelled to transfer Kshs 500 via M-Pesa and that the perpetrator took her phone during the struggle before fleeing. This was corroborated by PW4, who confirmed through Safaricom data that the M-Pesa transaction was executed and linked to the appellant's mother. The taking was without consent and accompanied by threats. This satisfies the element of robbery.
14. On whether there was violence or a threat thereof, PW1 testified that the appellant produced a panga, overpowered her and engaged her in a physical struggle. She was injured in the process. PW2, the police surgeon, confirmed multiple injuries including bruising and tenderness on the forehead, jaw, shoulder, wrist and leg, which he classified as harm. These injuries demonstrate the use of actual violence during the robbery, meeting the statutory requirement that violence occur “at or immediately before or immediately after” the robbery.



15. On the third element, PW1 was clear that the appellant drew a panga from his coat. A panga is recognised in law as a dangerous or offensive weapon. The fact that PW2 confirmed injuries consistent with both blunt and sharp trauma further supports this element. The prosecution thus proved the appellant was armed.
16. Furthermore, PW1 stated she saw the appellant clearly after his face mask fell. PW3 conducted an identification parade in which PW1 positively identified him. PW3 testified that the parade followed proper procedure and that the appellant consented. The defence assertion that the parade was flawed was unsupported. PW1 had no motive to fabricate the case, a fact conceded by the appellant.
17. In his defence, the appellant denied committing the offence and claimed that this was a case of mistaken identity. He offered no evidence undermining the M-Pesa link, or the identification parade. His claim that the weapon was not recovered does not displace clear eyewitness testimony corroborated by medical and documentary evidence.
18. In my view, the prosecution proved all ingredients of robbery with violence under section 296(2) of the Penal Code. The conviction by the trial court was proper and is upheld.
19. The appellant was sentenced to three years' imprisonment. In doing so, the trial court considered that he was a first offender, his mitigation, the pre-sentence report and the fact that he was a minor aged seventeen at the time of the offence. The court properly exercised its sentencing discretion.
20. In the premises, I see no reason to interfere. The appeal is found to be lacking in merit and is dismissed in its entirety.

Orders accordingly.

JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 26TH DAY OF NOVEMBER 2025

D. KAVEDZA

JUDGE

In the presence of:

Appellant Absent

Mutuma for the Respondent

Karimi Court Assistant.

