

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KIBERA
CRIMINAL APPEAL NO. E050 OF 2025

FREDRICK ODHIAMBO ONYANGO.....
.....APPELLANT

VERSUS

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

(Being an appeal against the original conviction and sentence delivered by Hon. Kahuya I.M (S.P.M) on 10TH March 2025 at Kibera Chief Magistrate's Court Criminal Case No. E.762 of 2023 Republic vs Fredrick Odhiambo Onyango)

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), and assault causing actual bodily harm, contrary to section 251 of the Penal Code. He was sentenced to serve twenty (20) years imprisonment on count I and 1 year imprisonment on count II.
- 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 four witnesses in support of its case. PW1, Justus Mumbua, testified that on 26th April 2023 at approximately 9:30 pm, she was walking along the Southern Bypass with three other women when two individuals emerged from the bushes. One assailant grabbed her while the other robbed the remaining women. In the struggle, PW1's assailant cut her on the back of the head with a panga. She positively identified the appellant as the attacker, aided by street lighting. PW1 was taken to St. Monica's Hospital for treatment and subsequently reported the matter at Langata Police Station. She confirmed her presence with PW2, Janet Makau, during the identification parade and noted that the appellant did not steal from her.
5. During cross-examination, PW1 clarified that one assailant was armed with a panga and that she failed to identify the appellant at the first parade but positively identified him at the second. She maintained that the appellant was the one who robbed the women while his accomplice restrained her.
6. PW2, Janet Makau, corroborated PW1's account, positively identifying the appellant during the ID parade. She affirmed during cross-examination that the appellant was the first assailant and that she could not identify his accomplice, who remained on the ground during the attack.
7. PW3, Felisters Komora, a medical officer, examined PW1 and completed a P3 Form confirming a cut wound to the scalp, categorised as harm. PW4, CIP Langat, conducted the ID parade with participants sharing similar features to the appellant. The parade was conducted with the appellant's consent and in the presence of his brother, Shem Nyekoba. Both PW1 and PW2

identified the appellant by touch; two additional witnesses corroborated the identification.

8. In his defence, the appellant, a mechanic from Ngara, denied the allegations, asserting that they were fabricated by a former girlfriend and amounted to mistaken identity. He challenged the identification parade, claiming the participants did not closely resemble him. During cross-examination, he reiterated the charges were fabricated, and during re-examination admitted that his photograph had been shown to witnesses prior to the ID parade.

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 offence of robbery with violence under section 296(2) of the Penal Code requires proof of several essential ingredients. The first is theft. PW2 testified that during the incident the appellant snatched her phone, handbag, and money. She unequivocally stated that it was the appellant who took the phone from her. This evidence was corroborated by PW1, who confirmed seeing the appellant at the scene. The corroborating evidence establish that a theft occurred and that the appellant was the perpetrator.

11. The second ingredient is the use or threat of violence at or immediately before or after the theft. PW1 testified that the appellant drew a knife from his back pocket and stabbed her on the left elbow during a struggle, directly linking the act of violence to the theft. Medical evidence, as recorded in the P3 form, confirmed that PW1 sustained injuries, which were classified as harm. This substantiates the element of actual violence accompanying the theft.
12. The third ingredient is the presence of more than one person during the commission of the robbery. PW1 testified that the appellant was accompanied by another individual who robbed the other women. This aspect of the evidence was uncontested and establishes that the robbery was committed in concert with at least one other person.
13. PW2 positively identified the appellant as the person who stole her belongings. PW4, the investigating officer, conducted two identification parades during which both PW1 and PW2 positively identified the appellant by touch. The consistency of the identifications, reinforced by procedural safeguards, confirms the reliability of the identification.
14. The prosecution evidence proved beyond reasonable doubt the offence of robbery with violence against the appellant. The conviction on Count I is therefore proper and is affirmed.
15. On the second count the appellant was charged with the offence of assault causing actual bodily harm contrary to section 251 of the Penal Code.
16. According to **Section 251 of the Penal Code: -**

“Any person who commits an assault occasioning actual bodily harm is guilty of a misdemeanour and is liable to imprisonment for five years.”

17. The essential elements of the offence of assault causing actual bodily harm are;

i. Assaulting the complainant or victim

ii. Occasioning actual bodily harm

18. PW1 testified that during the incident the appellant cut the back of her head with a panga as she attempted to flee. She described the assault in detail, explaining that the attack occurred while she was trying to evade the appellant. Her account was corroborated by PW2, who witnessed the appellant striking PW1 with the weapon, thereby confirming the occurrence of the assault. Both witnesses consistently described the sequence of events and the appellant's direct involvement in causing injury.

19. The second element, occasioning actual bodily harm, was substantiated by PW3, a medical officer, who examined PW1 and completed the P3 Form. The medical report documented a cut wound to the scalp and classified the injury as harm, consistent with the accounts given by PW1 and PW2. The medical evidence provided independent verification of the assault and established the nature and severity of the injury sustained.

20. Taken together, the evidence from the eyewitnesses and the medical officer demonstrates a clear and unbroken link between the appellant's actions and the bodily harm suffered by PW1. The testimonies were consistent, credible, and unchallenged by the defence in any material respect. The combination of eyewitness accounts and medical confirmation establishes beyond

reasonable doubt that the assault occurred and resulted in actual bodily harm.

21. Accordingly, the prosecution proved its case on the charge of assault. The trial court correctly found the appellant guilty under section 251 of the Penal Code.

22. On sentence, the appellant was sentenced to twenty (20) years' imprisonment and one (1) year imprisonment on Count II. The court considered the pre-sentence report, the appellant's mitigation, and his status as a first-time offender. However, the trial court did not indicate whether the sentences were to run concurrently or consecutively. In the circumstances, and in the absence of any express direction to the contrary, the sentences shall run concurrently. In all other respects, I find no reason to interfere with the trial court's sentencing decision.

23. 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 Present

Mutuma for the Respondent

Karimi Court Assistant.