

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KIBERA
CRIMINAL APPEAL NO. E091 OF 2025

CHARLES NYAINYE SASATI.....
APPELLANT

VERSUS

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

(Being an appeal against the original conviction and sentence delivered on 5th June 2025 by Hon. M. Maroro (SPM) at Kibera Chief Magistrate's Court Criminal Case no. E098 of 2024 Republic vs Charles Nyainye Sasati)

JUDGEMENT

1. The appellant was charged and after a full trial convicted of the offence of robbery with violence contrary to section 296(2) of the Penal Code. The particulars are that the appellant on the 23rd December 2023 at Langata Southland in Langata Sub County within Nairobi county jointly with others not before court robbed Alloyce Juma Ogal off two mobile phone an Infinix Smart 7 blue in colour valued at Kshs. 12700 and Oking Phone valued at Kshs. 1500 all valued at Kshs. 14200 and at or immediately before or immediately after the time of such robbery threatened to use actual violence on the said Alloyce Juma Ogal. He was thereafter sentenced to serve life imprisonment.
2. Being aggrieved, he filed the present appeal challenging the totality of the prosecution evidence against which he was convicted, which he claimed was contradictory. In his petition of appeal, he further contended that the learned magistrate disregarded his plausible 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 witnesses in support of their case. PW1, Alloyce Juma Ogal, a corporal attached to Langata Barracks, testified that on 8th December 2023 at about 5.50 pm he met the appellant at a burial ceremony. The appellant asked him for Kshs. 20, and as PW1 retrieved his phone to send money, the appellant snatched it and ran off. PW1 later asked a mutual acquaintance to persuade the appellant to return the phone, but the appellant instead demanded money and issued threats. On 23rd December 2023 at about 11.00 am, PW1 encountered the appellant again in the company of others. They assaulted him, tore his jacket, and robbed him of an Infinix Smart 7 phone and an Oking device. He reported the matter at Kenyatta Police Post and produced the purchase receipt. He stated that he knew the appellant well and the robbery occurred in broad daylight.
5. PW2, Benedict Mwende Mutiso, a salonist residing in Langata, stated that he had been with PW1 earlier on 23rd December 2023. He was later informed that PW1's phone had been stolen. He met the appellant, whom he knew as a friend, and gave him Kshs. 1,000 after the appellant claimed he could recover the phone.
6. PW3, Daniel Opiyo, a Chief Inspector and former investigating officer at Langata, testified that the complainant reported being

attacked and robbed of two phones by three persons. The appellant, known by the nickname “Kyalo”, was identified as the main suspect. Statements were recorded, receipts submitted, and the appellant was later identified in an identification parade.

7. PW4, Linda Medza, an Inspector at the Kenya Police Headquarters, conducted the identification parade on 13th January 2024. She assembled eight persons of similar appearance, explained the process to the appellant, and noted no objection. The complainant positively identified the appellant by touching his shoulder. She completed and signed the parade form.
8. In his defence, the appellant stated that he was arrested while walking from work with colleagues, that officers asked for money, and that he had never stolen any phone from the complainant.
9. The appellant was convicted of the offence of robbery with violence.
10. Directions were issued and the court directed that the appeal be canvassed by way of written submissions. The submissions on record have been duly considered and there is no need to rehash them.
11. In this appeal, the issue for determination is whether the appellant was properly charged, convicted and sentenced by the trial court.
12. The key ingredients for the offence of 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”.

13. Section 296(2) of the Penal Code is satisfied if any one of the statutory elements is proved. In his evidence, PW1 did not describe the presence or use of a weapon, and no such item was recovered or produced. In the first incident he indicated that the appellant snatched his phone and ran. On the second instance, it was his evidence that the appellant in the company of others assaulted him and tore his jacket. The evidence did not show that the appellant or his companions were armed with any dangerous or offensive weapon. This element was not established.
14. The second ingredient requires proof that the offender was in the company of one or more persons. PW1 was clear that on 23rd December 2023 the appellant confronted him while accompanied by friends. They jointly assaulted him, tore his jacket, and robbed him of his phone and Oking device. PW3 confirmed that the complainant had reported being attacked by three individuals and that the description matched the appellant. This evidence was consistent and unchallenged. I am satisfied that this element was proved.
15. The final ingredient concerns the use or threat of actual violence. PW1 stated that he was hit on the chest and his jacket was torn during the robbery. The assault was contemporaneous with the theft and directly facilitated the taking of the property.

The defence did not dislodge this account, and there was no reason to doubt PW1's credibility, particularly given the daylight circumstances and his prior familiarity with the appellant. I find that the prosecution proved the use of violence beyond reasonable doubt.

16. In the premises, although the prosecution failed to demonstrate that the appellant was armed, it established that he acted with others and used actual violence in the course of the robbery. Either ground independently meets the threshold under section 296(2), and both were proved. The conviction by the trial court was therefore proper and is upheld.
17. The appellant was sentenced to thirty-five years' imprisonment. The trial court considered his mitigation, the pre-sentence report, and his status as a first offender. Under section 329 of the Criminal Procedure Code, the court is empowered to consider mitigation and impose a sentence proportionate to the offence, even where a specific penalty is prescribed by law. In this case, the sentence imposed was harsh and excessive and overlooked the appellant's potential for rehabilitation.
18. Accordingly, the appeal on the sentence partially succeeds. The sentence of life imprisonment imposed is substituted with a term of twenty (20) years' imprisonment. The sentence shall run from 13th January 2024 the date of the appellant's arrest, pursuant to section 333(2) of the Criminal Procedure Code.

Orders accordingly.

**Judgement dated and delivered virtually this 25th day of
November 2025**

D. KAVEDZA
JUDGE

In the presence of:

Appellant Present

Mr. Mutuma for the Respondent

Ms. Karimi Court Assistant.

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