

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KIBERA
CRIMINAL APPEAL NO. E087 OF 2025

**ISAAC
KHANGA.....APPELLANT**

VERSUS

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

(Being an appeal against the original conviction and sentence delivered by Hon. C. Njagi (S.P.M) on 9th June 2025 at Kibera Chief Magistrate's Court Criminal Case No. E.2250 of 2024 Republic vs Isaac Khanga)

JUDGEMENT

- 1.The appellant was charged and, after a full trial, convicted on two counts of robbery with violence contrary to section 296(2) of the Penal Code. He was sentenced to death on both counts.
- 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 three witnesses in support of its case. PW1, Vincent Ouma Oketch, testified that on the material night he was dropping off clients. Upon stopping, he alighted from the vehicle.

As he opened the car door, he and the other occupants were attacked by the appellant together with three other persons. He stated that during the attack, the appellant and his accomplices robbed him of a Tecno mobile phone and cash in the sum of Kenya Shillings Thirty Thousand (Kshs 30,000). PW1 testified that he was able to positively identify the appellant, as the area was illuminated by a well-lit street light.

5. On cross examination, PW1 stated that he was well acquainted with the appellant, having known him from their youth, and that they resided in the same locality.

6. PW2, Joseph Omondi, testified that on 3rd November 2024 at about 11.00 pm, he was in a motor vehicle with PW1 and other persons, making a total of six occupants. He stated that a large group of people attacked them. According to PW2, PW1 was struck with a stone and robbed by the appellant. PW2 further testified that he himself was hit on the chest by the appellant. He stated that the appellant stole his mobile phone and then fled from the scene.

7. PW2 testified that he was able to identify the appellant at the scene as there was sufficient lighting from a street light. During cross examination, PW2 stated that they had been heading to the appellant's house together with PW1 and others but did not reach their destination, as they were attacked and robbed along the way.

8. PW3, Corporal Peter Ojwang, attached to Muthangari Police Station, testified as the investigating officer. He stated that he received the report of the robbery, recorded statements from the complainants, and conducted investigations. His evidence corroborated the testimonies of PW1 and PW2. He confirmed that

both PW1 and PW2 positively identified the appellant as one of the assailants who robbed them.

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, contrary to section 296(2) of the Penal Code, requires proof of four essential ingredients. The first is theft accompanied by violence or the threat thereof. PW1 testified that the appellant forcibly took his mobile telephone and cash in the sum of Kshs 30,000. PW2 gave evidence that his mobile telephone was similarly taken by the appellant. This evidence of theft was consistent, cogent, and unchallenged, thereby establishing the foundational element of theft beyond reasonable doubt.

11. The second ingredient demands the use or threat of violence to the person at, immediately before, or immediately after the theft. PW1 stated that the appellant struck him on the head with a stone. PW2 testified that he was struck on the chest by the appellant. These assaults were perpetrated contemporaneously with the thefts and were manifestly intended to overcome

resistance or facilitate the robbery. The employment of actual violence was thus conclusively proved.

12. The third ingredient is that the robbery be committed by two or more persons jointly. PW1 and PW2 both testified that the appellant acted in concert with a group of individuals. PW2 specified that the group exceeded ten in number. This evidence remained uncontroverted and amply satisfies the statutory requirement of plurality of offenders.
13. The fourth and final ingredient concerns the identification of the appellant as one of the perpetrators. Both PW1 and PW2 made positive and unequivocal dock identifications of the appellant as the assailant who robbed and assaulted them. PW1 further testified to prior acquaintance with the appellant through a youth group, which provided favourable conditions for accurate recognition and rendered the identification wholly reliable. No suggestion of mistake or concoction was sustained.
14. The appellant's defence amounted to a bare denial of involvement coupled with an assertion of mistaken identity. This defence was duly considered but found to be devoid of evidential foundation and incapable of raising any reasonable doubt in light of the clear, corroborated, and compelling testimony of the two complainants.
15. Upon a careful review of the record, this Court is satisfied that the prosecution discharged its burden of proving each and every ingredient of the offence of robbery with violence beyond reasonable doubt. The evidence adduced was overwhelming, consistent, and left no room for doubt as to the appellant's guilt.
16. In the premises, the conviction is impeccably grounded in evidence, discloses no miscarriage of justice, and is entirely safe.

The appeal against conviction lacks merit and is accordingly dismissed. The conviction on both counts imposed by the trial court is hereby affirmed.

17. In relation to sentence, the appellant was convicted on two counts of robbery with violence and sentenced to death on each count, with the sentence on Count II held in abeyance. The learned trial magistrate, in arriving at the sentence, duly considered the pre-sentence report, the aggravating circumstances of the offence and imposed the sentence prescribed under the law.

18. It is trite law that sentencing serves multiple objectives: retribution, deterrence, protection of society, and, where appropriate, the rehabilitation of the offender. Having reviewed the circumstances of the case, the appellant's mitigating factors as disclosed in the pre-sentence report, his relative youth, and the absence of prior convictions, I am persuaded that the imposition of the death penalty, is, in the present constitutional dispensation, excessive and disproportionate. A custodial term that balances retribution with the prospect of rehabilitation is more consonant with contemporary penal policy.

19. In the premises, the sentences of death imposed on Counts I and II are hereby substituted with a sentence of twenty (20) years' imprisonment on each count. The sentences shall run concurrently with effect from 6th November 2024, being the date of the appellant's arrest, in accordance with section 333(2) of the Criminal Procedure Code.

20. To this extent, the appeal against sentence succeeds. The conviction remains affirmed, but the sentence is varied as aforesaid.

Orders accordingly

**Judgement dated and delivered virtually this 17th day of
December 2025**

**D. KAVEDZA
JUDGE**

In the presence of:

Appellant Present

Mr. Mutuma for the Respondent

Karimi Court Assistant.

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