



**Omondi & another v Republic (Criminal Appeal E058 of 2025)
[2025] KEHC 18290 (KLR) (9 December 2025) (Judgment)**

Neutral citation: [2025] KEHC 18290 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL E058 OF 2025
DR KAVEDZA, J
DECEMBER 9, 2025**

BETWEEN

VICTOR OMONDI 1ST APPELLANT

GEOFFREY ONYANGO 2ND APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal against the original conviction and sentence delivered on
3rd April 2025 by Hon. Z. Abdul (P.M) at Kibera Chief Magistrate's Court
Criminal Case no. E1628 of 2023 Republic vs Victor Omondi & Geoffrey Onyango)*

JUDGMENT

1. The appellants were jointly charged with the offence of robbery with violence contrary to section 296(2) of the Penal Code. The particulars are that on the 5th October, 2023 at around 7.30pm at Bomas Cemetery Bridge along Langa'ata Road in Lang'ata Sub-County, within Nairobi County, while armed with an offensive weapon namely a panga, robbed Serah Wekhulo her mobile phone make OPPO A37 worth Kshs.6000/-, her bag, utensils and Kshs. 8,500/- and immediately before such robbery used actual violence and injured the said Serah Wekhulo. After a full trial, they were each convicted and sentenced to serve forty-five (45) years imprisonment.
2. Aggrieved, he filed their respective appeal, which was later consolidated. In their petition of appeal, they challenged the totality of the prosecution evidence against which they were convicted. They urged the court to quash their convictions 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, Serah Wekhulo, testified that on 5th October 2023 at about 6.40 pm, while walking towards Galleria to board a matatu to Ngong, she reached the Cemetery Area when the 2nd appellant emerged from a tunnel armed with a panga and a knife. He demanded all her belongings and threatened to kill her, placing the panga on her neck. Simultaneously, the 1st appellant appeared from the side of the tunnel and took her jacket, which was tied around her waist. In the jacket were Kshs. 8,500 in cash, a mobile phone, her national identity card, and a bottle of anointing oil. PW1 held on to her bag, but the 1st appellant stabbed her on the left wrist with a small knife, forcing her to release it, after which the two appellants fled towards the forest.
5. PW1 stated that two men came to her assistance shortly after the appellants escaped and escorted her to Lang'ata Police Station, where she made a report. She was issued a P3 form and sought treatment at a hospital in Ngong. The stolen bag contained utensils, including a small storage container, six serving spoons, a cooking stick, and two knives. She later attended an identification parade after the appellants were arrested and positively identified both of them, stating that the area was well-lit by billboard lights and that she saw them clearly during the attack.
6. On cross-examination, she maintained that she had no difficulty identifying them and added that both had dreadlocks at the time, a feature that was also present on the parade members.
7. PW2, Patrick Mwangi, a corporal attached to Lang'ata Police Station, testified that while on patrol with PC Thomas Dika around the Cemetery Area due to frequent reports of robbery with violence, they encountered persons hiding in the bush near the scene of the attack. Upon being challenged, the suspects fled but were pursued with the aid of members of the public and were apprehended. The two appellants were then escorted to the police station.
8. PW3, Francis Maina, the officer in charge of crime at Lang'ata Police Station, stated that he conducted separate identification parades for the two appellants and that PW1 positively identified each of them. On cross-examination, he denied the allegation that PW1 had seen the appellants prior to the parade or that their photographs had been taken beforehand.
9. PW4, the investigating officer, Geoffrey Macharia, confirmed that the matter was duly reported and outlined the steps taken during investigations. He reiterated the evidence already tendered and produced a receipt for the recovered phone as an exhibit. He also produced the P3 form relating to PW1's injuries.
10. At the close of the prosecution's case, the appellants were placed on their defence. The 1st appellant testified on oath that he was arrested, searched, and taken to the police station, where PW1 was brought and asked to identify him, but allegedly said he was not one of the robbers. He claimed that she later identified him at the parade after having seen him earlier. He further alleged that he was asked for Kshs. 10,000, which he could not raise, and was thereafter charged.
11. The 2nd appellant testified that he was arrested for failing to use a footbridge, taken to the police station where his photograph was taken, and later subjected to an identification parade at which PW1 positively identified him.
12. The appeal was canvassed by way of written submission which have been duly considered and there is no need to rehash them.



13. 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”.
14. To secure a conviction for robbery with violence under section 296(2) of the Penal Code, the prosecution must prove that the offender was armed with a dangerous or offensive weapon, was in the company of one or more other persons, or used or threatened to use actual violence during the robbery.
15. The complainant’s evidence established that the 2nd appellant confronted her while armed with a panga and a knife and placed the panga on her neck while threatening to kill her if she did not surrender her property. A panga and a knife are plainly dangerous and offensive weapons for purposes of section 296(2) of the Penal Code.
16. On the element of being in the company of others, PW1 testified that as the 2nd appellant threatened her from the front, the 1st appellant simultaneously emerged from the side of the tunnel and participated in the robbery by taking her jacket containing cash, a mobile phone, her national identity card and other personal items. This joint action satisfied the statutory requirement of acting in the company of another.
17. As regards the element of actual violence and threat of violence, PW1 testified that when she resisted releasing her bag, the 1st appellant stabbed her on the left wrist with a knife, causing injury. The medical evidence through the P3 form corroborated the occurrence of physical harm. This evidence conclusively proved that the complainant was not only threatened with death but was also physically assaulted. The element of violence was therefore proved beyond reasonable doubt.
18. On identification, PW1 stated that the area was well-lit by billboard lights and that she saw both appellants clearly during the attack. She later attended separate identification parades conducted by PW3 and positively identified each appellant. She maintained under cross-examination that she did not struggle with identification and that she relied on what she saw during the incident.
19. The evidence of arrest by PW2 further placed the appellants at the scene shortly after the robbery. While on patrol near the Cemetery Area following reports of frequent robberies, PW2 and his colleague encountered suspicious persons hiding in the bushes near the scene. Upon being challenged, the suspects fled but were pursued and apprehended with the assistance of members of the public, and were later confirmed to be the 1st and 2nd appellants.
20. The defences offered by the appellants were duly considered. The 1st appellant alleged that PW1 initially failed to identify him and that he was later implicated for failing to raise money demanded from him, while the 2nd appellant claimed he was arrested over a footbridge offence and only later linked to the robbery. These explanations were unconvincing and did not displace the consistent, direct and corroborated prosecution evidence on identification, arrest and recovery.
21. Having analysed the evidence in totality, the Court is satisfied that all the essential elements of the offence of robbery with violence were proved beyond reasonable doubt. The conviction of both the 1st and 2nd appellants was therefore sound in law and is hereby upheld.
22. In one sentence, the trial court imposed a custodial sentence of forty-five (45) years’ imprisonment after considering the pre-sentence reports and the mitigation by the appellants. While sentencing serves



both punitive and rehabilitative objectives, it must also be proportionate to the circumstances of each offender.

23. Although the sentence imposed was lawful, taking into account that the appellants were treated as first offenders and having regard to the overall circumstances of the case, I am satisfied that the sentence of forty-five (45) years was excessive.
24. Accordingly, the sentence is substituted with a term of twenty (20) years' imprisonment for each appellant. The sentence shall run from 19th October 2023, the date of their arrest pursuant to section 333(2) of the Criminal Procedure Code, Cap 75 of the Laws of Kenya.

Orders accordingly.

JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 9TH DAY DECEMBER 2025

D. KAVEDZA

JUDGE

In the presence of:

Appellant Present

Mr. Mutuma for the Respondent

Karimi Court Assistant.

