



REPUBLIC OF KENYA



**Omache v Republic (Criminal Appeal E064 of 2025)
[2025] KEHC 18282 (KLR) (3 December 2025) (Judgment)**

Neutral citation: [2025] KEHC 18282 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL E064 OF 2025
DR KAVEDZA, J
DECEMBER 3, 2025**

BETWEEN

INNOCENT OMACHE APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal against the original conviction and sentence delivered on 8th May 2025 by Hon. Z. Abdul (PM) at Kibera Chief Magistrate's Court Criminal Case No. E251 of 2024 Republic vs Innocent Omache)

JUDGMENT

1. The appellant was charged and convicted with two counts of offences. Count I, robbery with violence contrary to section 296(2) of the Penal Code where he was sentenced to serve life imprisonment. Count II, resisting arrest contrary to section 103(a) of the [National Police Service Act](#) and he was sentenced to serve ten (10) years 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 five witnesses. PW1, Boniface Kwachi Ngose, testified that on 6th October 2023 at about 7.30 pm, while walking home from church with PW2 near Wema Hospital, they encountered a group of boda boda riders and a dog lying on the road. PW1 scared the dog off to avoid it being hit



- by an oncoming vehicle. Shortly thereafter, he was grabbed by the chin and the back of the head by several people. Upon inquiring what the issue was, the appellant accused him of beating the dog. The area was well lit with floodlights and PW1 saw the appellant clearly.
5. In the ensuing scuffle, he lost his mobile phone and cash from his pockets. Members of the public gathered and the appellant left. PW1 reported the matter at Kawangware Police Post the same night and was advised to return the following day. After several unsuccessful attempts to trace the appellant, PW1 spotted him on 12th October 2023, noted his motorcycle registration number KMGH 119C, and informed the police. The appellant was arrested but resisted detention violently.
 6. Later, the appellant's brother sought forgiveness and promised compensation for the stolen phone. The appellant confirmed the promise but failed to honour it. PW1 was later summoned in February 2024 to record his statement, after which the appellant was charged. PW1 identified the appellant in court and maintained that he was robbed. On cross-examination, he reiterated that the scene was well lit, that the appellant was not armed, and that no compensation was ever made.
 7. PW2, Josephat Yahuma Muchesia, confirmed that he was with PW1 on the material evening. He stated that after PW1 scared the dog off the road, the appellant emerged and grabbed PW1 by the neck as about five other persons ransacked his pockets. The area was well lit and he saw the appellant clearly. He raised an alarm but the attackers ignored him. He later recorded his statement and identified the appellant in court as the person who attacked PW1 in the company of others and facilitated the robbery. On cross-examination, he maintained that the appellant initiated the attack before his accomplices stole from PW1.
 8. PW3, Charles Kimani, a Nyumba Kumi elder, testified that on 22nd October 2023 he and a fellow elder, Hussein Chege, were informed of the robbery and given the motorcycle registration number linked to the suspect. They traced the motorcycle to a stage where the appellant admitted ownership. Upon being informed of the complaint and asked to accompany them to the Chief's office, the appellant became violent, resisted arrest, and stripped off his clothes. With the assistance of police officers, he was restrained and taken into custody.
 9. PW4, PC Dennis Munyoki, of Kawangware Police Post, stated that following the report, he directed the Nyumba Kumi elders to trace the appellant. The appellant was brought to the station but resisted detention, necessitating reinforcement from another officer and the elders before he was secured.
 10. PW5, Inspector Joshua Waweru Mwau, the Investigating Officer, confirmed that PW1 reported the robbery and reiterated the evidence of the other witnesses. He added that upon arrest, the appellant requested time to compensate the complainant and was released on that basis but failed to do so, leading to his re-arrest and subsequent charge. A receipt for the stolen phone was produced as an exhibit.
 11. At the close of the prosecution case, the appellant, Innocent Omache, gave sworn testimony in which he denied committing the offence. He maintained that he was wrongfully arrested. DW2, Charles Omache, the appellant's brother, confirmed that after the appellant's arrest he met the complainant at Muthangari Police Station, where the complainant narrated how he had been robbed. They agreed that the appellant would compensate the complainant, but DW2 admitted that the compensation was never made.
 12. The appellant was convicted of the offence of robbery with violence and resisting arrest.
 13. 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.



14. In this appeal, the issue for determination is whether the appellant was properly charged, convicted and sentenced by the trial court.
15. The key ingredients for the offence of robbery with violence in count I 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”.
16. Section 296(2) of the Penal Code is established if any one of the statutory ingredients is proved. From the evidence on record, PW1 was categorical that the appellant was not armed with any weapon during the incident. No dangerous or offensive weapon was seen, recovered, or produced in evidence. Both PW1 and PW2 confirmed that the appellant used his hands to restrain PW1 as others ransacked his pockets. This ingredient was therefore not proved.
17. The second ingredient relates to whether the appellant was in the company of one or more persons. PW1 testified that he was accosted by the appellant together with several other persons who participated in the attack and theft. PW2 corroborated this account and stated that the appellant held PW1 by the neck as about five other persons ransacked his pockets. This evidence was consistent, mutually reinforcing, and remained unshaken on cross-examination. I am satisfied that the prosecution proved beyond reasonable doubt that the appellant acted in the company of others.
18. On the element of actual violence, PW1 testified that he was violently held by the chin and the back of the head during the robbery. Although no weapon was used, the unlawful physical force was applied contemporaneously with the theft and facilitated the loss of the phone and cash. PW2 confirmed that the appellant forcefully restrained PW1 as the accomplices robbed him. This ingredient was therefore proved.
19. In the premises, whereas the prosecution failed to prove that the appellant was armed with a dangerous or offensive weapon, it successfully demonstrated that he acted jointly with others and that actual violence was used in the course of the robbery. Either of these elements independently satisfies the threshold under section 296(2) of the Penal Code. The conviction was therefore sound in law and is hereby upheld.
20. In count II, the appellant was charged with resisting arrest contrary to section 103(a) of the [National Police Service Act](#). The Act provides that:

“ 103. Assault in execution of duty
Any person who

 - (a) assaults, resists or willfully obstructs a police officer in the due execution of the police officer’s duties;
 - (b) assaults, resists or willfully obstructs any person acting in aid of the police officer;
 - (c) attacks an animal belonging to the Service; or
 - (d) intentionally or recklessly, destroys police property, commits an offence and shall be liable on conviction to a fine not exceeding



one million shillings or to imprisonment for a term not exceeding ten years, or to both.”

21. The offence contains three key elements which the prosecution must prove beyond reasonable doubt: that the person resisted, assaulted, or wilfully obstructed; that the act was directed at a police officer; and that the officer was acting in the due execution of his lawful duty.
22. From the evidence on record, PW3 testified that when the appellant was informed that he would be taken to the Chief’s office and subsequently to the police, he became violent, resisted arrest, and had to be physically restrained with the assistance of the public and police officers. PW4, a police officer at Kawangware Police Post, confirmed that upon being presented at the station and informed that he would be detained, the appellant actively resisted arrest, necessitating reinforcement before he could be secured. This evidence was direct, consistent, and unshaken on cross-examination.
23. It was also not disputed that PW4 was a duly serving police officer acting within the scope of his lawful duties, namely effecting the arrest of the appellant following a reported commission of an offence. The appellant’s conduct amounted to deliberate physical resistance to a lawful arrest.
24. The appellant’s defence did not offer any plausible explanation for his violent conduct at the police station and did not dislodge the clear testimony of PW3 and PW4. The prosecution therefore proved all the essential ingredients of the offence under section 103(a) of the Act.
25. I accordingly find that the conviction on Count II for resisting arrest was proper and is upheld.
26. The appellant was sentenced to life imprisonment in count I and ten (10) years in count II. The trial court considered his mitigation, 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.
27. Accordingly, the appeal on the sentence partially succeeds. The sentence of life imprisonment imposed in count I, is substituted with a term of twenty (20) years’ imprisonment. The sentence of ten (10) years imprisonment imposed in Count II is substituted with a sentence of two (2) years imprisonment. The sentences shall run concurrently from 2nd February 2024 the date of the appellant’s 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 3RD DECEMBER 2025

.....

D. KAVEDZA

JUDGE

In the presence of:

Mr. Okone h/b for Nyambege for the Appellant

Mr. Mutuma for the Respondent

Karimi Court Assistant.

Kibera High Court Criminal Appeal No. E064 of 2025 Page 3 of 3

