Oyuke v Republic (Criminal Appeal E077 of 2023)
[2025] KEHC 19203 (KLR) (18 December 2025) (Judgment)

Neutral citation: [2025] KEHC 19203 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT BUNGOMA

CRIMINAL APPEAL E077 OF 2023

MS SHARIFF, J

DECEMBER 18, 2025

BETWEEN

JUSTUS OYUKE ..... APPELLANT

AND

REPUBLIC ..... PROSECUTION

(Being an appeal from the original conviction and sentence in Chief Magistrate Court at Bungoma in Criminal case No. E055 of 2021 dated and delivered on 7th December 2023 –Hon. E.M. Ayuka-PM)

JUDGMENT

A. Background

1. The Appellant was charged and convicted for the offence of Stealing from a locked motor vehicle contrary to Section 279 (g) of the Penal Code. The particulars of the offence were that on 22nd September 2021, at Bungoma Township in Bungoma South Sub-County within Bungoma County, jointly with others not before the Court stole Kshs. 760,000/= (Kshs. Seven Hundred and Sixty Thousand) the property of Martin Nyongesa Wanyama and in order to commit such theft opened a locked motor vehicle KCD 138 K make Toyota Rush using unknown instrument.

2. The Appellant herein denied the charges and the case proceeded to full trial.

B. The Duty Of A First Appellate Court

3. The duty of the first appellate court remains as set out in the Court of Appeal for Eastern Africa in Pandya -vs- Republic [1957] EA 336 is as follows:-

> "On a first appeal from a conviction by a Judge or magistrate sitting without a jury the appellant is entitled to have the appellate court's own consideration and views of the

evidence as a whole and its own decision thereon. It has the duty to rehear the case and reconsider the witnesses before the Judge or magistrate with such other material as it may have decided to admit. The appellate court must then make up its own mind not disregarding the judgment appealed from but carefully weighing and considering it. When the question arises which witness is to be believed rather than another and that question turns on manner and demeanor, the appellate court must be guided by the impression made on the Judge or magistrate who saw the witness but there may be other circumstances, quite apart from manner and demeanor which may show whether a statement is credible or not which may warrant a court different."

4. Subsequently, this Court is fully aware of its duty as the first appellate Court as espoused in the case of Okeno Vs R (1972) EA 32 where the Court stated: -

> " An appellant on a first appeal is entitled to expect the evidence as a whole to be submitted to a fresh and exhaustive examination and the appellate court's own decision on the evidence. The first appellate court must Itself weigh conflicting evidence and draw its own conclusion".

C. Evidence

5. It was the Respondent's case that , Martin Wanyama, PW1, had sold a parcel of land and had received a consideration of Kshs. 800,000/= which he had then he placed the said under the seat of his car and drove home, but made a stopover at the market to purchase fish and proceeded to lock his vehicle, but on his return, barely ten minutes later, he had found the vehicle broken into and the money amounting to Kshs. 765,000/= had been stolen. On inquiry, he was notified by PW2 that people who broke into his motor vehicle were driving a motor vehicle registration number KDC 210 D. He told the Court that the Appellant herein, had links to the people who broke into his motor vehicle.

6. One Silvester Oduor, PW2, testified that he had seen PW1 park his motor vehicle, and shortly afterwards he had seen the Appellant herein, alight from a white motor vehicle registration number KDC 210D, and struggle to open PW1's vehicle without success prompting him to break the window glass and he had then picked up an envelope from PW1's car, placed it in his motor vehicle and drove off.

7. PC Audrey Oyuke testified that she was based at DCI and that she received an Exhibit Memo from the Investigating Officer in the matter before the trial court, containing a specimen signature marked as "A", questioned document marked as "B" and the known signature of the Appellant herein, marked as "C". She told the Court that upon her examination she established that the signature on the questioned document and known signature of the Appellant herein, both belonged to the Appellant herein and she produced the analysis report as PExhibit 4.

8. CPL Johana Tanui, PW7, testified that he was the investigating officer in the matter and that he had photographed both PW1's motor vehicle and KDC 210 D, the motor vehicle that was allegedly driven by the Appellant, on two different occasions. He produced the same in Court Pas Exhibit 8 (a) to 8 (h) and he had established that PW1's car had its glass window and lock broken.

9. PC Felix Mbuvi of DCI Bungoma South testified that he was the investigating officer in this matter and that PW1 reported at the Station that his motor vehicle had been broken into and money stolen from therein. He was accompanied to the stationed by an eye witness who saw someone driving a motor vehicle KDC 210 D break into PW1's vehicle. Subsequently the owner of the said motor vehicle was

arrested and he then established that the Appellant herein, had hired the same vehicle on the material day and time. This prompted him to arrest the Appellant.

10. When put on his defence, the Appellant categorically denied been in Bungoma on the day of the incident and that he never hired any motor vehicle from one Duncan Otieno, PW5. He noted that as per the availed document the person on the car hire agreement was Justus Oyuke Otuke but in this case his full name is Justus Nyamuok Oyuke.

11. At the end of the hearing, the trial Court fined the Appellant Kshs. 760,000/= in default the Appellant to Seven (7) years imprisonment.

D. Appeal

12. The Appellant being aggrieved by the trial Court determination filed its memorandum of appeal raising nine grounds of appeal summarized as follows;

    a. The learned magistrate erred in law and in fact in convicting the Appellant when no evidence had been tendered in proof of the charges.

    b. The learned magistrate erred in law and in fact in by convicting the Appellant without proper identification.

    c. The learned magistrate misdirected herself in finding that the evidence of the Prosecution witnesses was direct, consistent and overwhelming.

    d. The learned magistrate erred in law by imposing an excessive sentence.

E. Submissions

13. The appeal was canvassed by way of written submission. The Respondent herein conceded to the appeal. Respondent submitted that the identification of the Appellant was short of the required standards bearing in mind that PW2 was seeing the Appellant for the first time. He submitted that no Identification parade was conducted and that the failure to mention the other parties privy to the land sale and who also knew PW1 had the money in his car was also detrimental. He also submitted that the evidence on record is circumstantial.

14. The Appellant submitted that the Prosecution evidence was all hearsay and fabricated as PW2 was not to detail with the description of the person he saw, which side of the motor vehicle did he alight from nor did he give any unique description to differentiate him from the others in the same market area. He submitted that PW2 mentioning him wearing a white shirt was simply not sufficient to describe him. He relied on the case of Ogeto vs Republic (2004) KLR 19 to reiterate the issue on single identification. He told the Court that the sentence of Seven (7) years imprisonment is harsh considering how the Prosecution had failed to bring a strong case against him.

15. The conviction and sentences provoked this appeal mainly on the grounds that the prosecution case was not proved beyond reasonable doubt and that the defence was not given due consideration.

F. Analysis and Determination

16. I have considered the appeal in the light of the grounds of appeal and the rival submissions of parties and the evidence on record reveals that the PW1 never saw the Appellant steal from his locked motor vehicle and that the only evidence against Appellant was that of PW2 who had seen PW1 park his vehicle by the side of the road and had shortly thereafter seen a white vehicle bearing registration number KDC 210 D park next to PW1's motor vehicle. PW2 testified that he had then seen the

Appellant alight from the said motor vehicle and he attempted to open the door to the Complainant's vehicle. When the door did not open, the Appellant proceeded to break glass widow on the side of the driver's door and he saw the Appellant pick something resembling an envelope from the Complainant's car and put it in his car, and drove off. He told the Court that he reported the incident to the hardware watchman and noted the number plate of the said motor vehicle. On cross-examination, he told the Court that there was ample lighting, electricity light, for him to see everything and it been a busy road other passer must have seen the vehicle been broken into. He recounted that the incident occurred between 5 and 6 p.m.

17. The degree of proof in criminal cases was properly established in the classicus English case of Woolmington vs. DPP 1935 A C 462. Similarly, in Bakare vs. State 1985 2NWLR, Lord Oputa of the Supreme Court of Nigeria adopted the principle as follows at page 465: -

> " Proof beyond reasonable doubt stems out of the compelling presumption of innocence inherent in our adversary system of criminal justice. To displace the presumption, the evidence of the prosecution must prove beyond reasonable doubt that the person accused is guilty of the offence charged. Absolute certainty is impossible in any human adventure, including the administration of criminal justice. Proof beyond reasonable doubt means just what it says it does not admit of plausible possibilities but does admit of a high degree of cogency consistent with an equally high degree of probability".

18. The Appellant in his defence told the Court that he had travelled to Nairobi on 22nd September 2021 to visits a patient and he availed a bus ticket dated 19th September 2021, DEXH 1. He told the Court that he stayed in Nairobi for one week and returned on 24th September 2021. He noted that he used a cab and also availed a report in respect of the same DEXH 2. He insisted that he never hired any motor vehicle and that on 22nd September 2021, he was in Nairobi.

19. The testimony as rendered by PW3 was the only evidence available before the Court on identification which in my view was unsatisfactory and inadequate. The witness did not at all recognize the Appellant but was seeing him for the first time.

20. Whereas the trial magistrate appreciated the Respondent's duty to prove its case beyond any reasonable doubt, the magistrate nevertheless wholly relied on the uncorroborated evidence of the investigating officer and rejected Appellant's defence without giving any cogent reasons for so doing.

21. To my mind, the defence raised by the Appellant raises reasonable doubts on the Respondent's case. Reasonable doubt is not mere possible doubt. It is that State of the case which, after the entire comparison and consideration of all the evidence leaves the mind of the Court in that condition that it cannot say it feels an abiding conviction to a moral certainty of the truth of the charge.

22. From the totality of the evidence, I find that this is a case where Appellant ought to have been given the benefit of doubt. In criminal cases an iota of doubt suffices to find an acquittal. A singular circumstance that create reasonable doubt in the mind of a prudent man about the guilt of an accused is sufficient. The Accused is entitled to the benefit of doubt not a matter of grace and concession, but as a matter of right.

23. In the case of Michael Mumo Nzioka v Republic [2019] eKLR, the court cited with approval the holding in Elizabeth Waithiegeni Gatimu vs. Republic [2015] eKLR where Mativo, J (as he then was) stated that:

> " To my mind the rule that the prosecution may obtain a criminal conviction only when the evidence proves the defendant's guilt beyond reasonable doubt is basic to our law. It

is necessary that guilt should not only be rational inference but also it should be the only rational inference that could be drawn from the evidence offered taking into account the defence offered if any. If there is any reasonable possibility consistent with innocence, it is the duty of the court to find the defendant not guilty...Having considered the circumstances of this case, the prosecution evidence and the defence offered by the appellant, I am not persuaded that the conviction was justifiable and that this is a case where the accused ought to have been given the benefit of doubt. To give an accused person the benefit of doubt in a criminal case, it is not necessary that there should be many circumstances creating the doubt(s). A single circumstance creating reasonable doubt in a prudent mind about the guilt of an accused is sufficient. The accused is entitled to the benefit of doubt not a matter of grace and concession, but as a matter of right. An accused person is the most favourite child of the law and every benefit of doubt goes to him regardless of the fact whether he has taken such a plea. Reasonable doubt is not mere possible doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence leaves the mind of the court in that condition that it cannot say it feels an abiding conviction to a moral certainty of the truth of the charge."

24. The Respondent's evidence was of poor quality and the Principal State counsel was right to concede the appeal.

G. Conclusion

25. Accordingly, I allow the appeal, quash the conviction, set aside the sentence and order the Appellant shall be set at liberty unless otherwise lawfully detained.

Orders accordingly.

DELIVERED, SIGNED AND DATED AT BUNGOMA THIS 18TH DAY OF DECEMBER 2025

M.S. SHARIFF

JUDGE

In The Presence Of:

Appellant

Ms Kibet For Respondent

Peter Machoni - Court Assistant