

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KIBERA
CRIMINAL APPEAL NO. E065 & E067 OF 2025
(CONSOLIDATED)

JOSEPH NJOROGE MUNGAI.....1ND
APPELLANT

ELIAS MURUNYU KIHIIHA2ND
APPELLANT

VERSUS

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

(Being an appeal against the original conviction and sentence delivered on 3RD March 2025 by Hon. M. Murage (PM) at Kibera Chief Magistrate's Court, Criminal Case no. E1999 of 2023 Republic vs Joseph Njoroge Mungai and Elias Murunyu Kihaha)

JUDGEMENT

1. These files were consolidated for the purposes of this judgement. The 1st and 2nd appellants were jointly charged and after a full trial convicted by the trial court for the offence of robbery with violence contrary to section 296(2) of the Penal Code. The particulars as per the charge sheet are that on 8th day of December 2023, along Chemilil Road in Ngara in Westlands Sub-County within Nairobi County, the appellants jointly while being armed with an offensive weapon namely a knife robbed a mobile phone make Tecno Camon 18 valued at Kshs. 23,000/=, from Ariel Luizer Ochieng, and immediately after the time of such robbery, threatened to use actual violence to the said Ariel Luizer Ochieng. They were each sentenced to serve twenty-five (25) years' imprisonment.
2. Being aggrieved, the appellants filed the separate appeals challenging their conviction and sentence. The grounds raised have been coalized as follows: The appellants challenged the totality of the prosecution evidence against which they were

convicted. They argued that the trial court failed consider their respective defences. They complained that the sentence imposed was harsh and excessive. They urged the court to quash their 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 six witnesses in support of its case. PW1, Ariel Luizer Ochieng, testified that on 8 December 2023, at about the time she was returning to her hostel, a motorcycle carrying two persons approached her from behind. One of the passengers alighted, threatened her with a knife and forcibly robbed her of her mobile phone. She immediately reported the incident to a friend. On the following day, when attempts were made to call the stolen phone, the call was answered by a police officer attached to Parklands Police Station, who informed her that the phone was in police custody.

5. She proceeded to the station, identified the motorcycle registration number as that used by the assailants, produced the purchase receipt for the phone and unlocked it using her fingerprint. She further identified one of the appellants as the person who had worn a red jacket during the robbery. In cross examination, she maintained that there was sufficient street lighting and that she clearly saw and noted the motorcycle registration number.

6. PW2, Calvin Kojwang, testified and substantially corroborated the account given by PW1 on the circumstances of the robbery and the recovery of the phone.
7. PW3, Police Constable Benedict Were of Parklands Police Station, testified that on the material night, while on patrol with other officers in plain clothes, they observed two suspicious persons riding a motorcycle. They stopped and searched them. The rider identified himself as Elias Murunyu and the passenger as Joseph Njoroge. Upon searching the passenger, they recovered a Tecno mobile phone. The suspects were unable to unlock the phone or satisfactorily explain how they had acquired it. The officers suspected it to be stolen property, arrested both suspects and escorted them to Parklands Police Station. During cross examination, PW3 stated that the arrest was conducted in the presence of two other officers and that he did not lose sight of the suspects from the time of arrest until they were placed in the police cells.
8. PW4, Sergeant Jeniffer Chepkosgei Sirwa, testified that she was requested to take photographs of a motorcycle that had been parked at the police yard. The motorcycle bore registration number KMDQ 816Q. She produced the photographs in evidence.
9. PW5, Police Constable Daniel Odhaimbo, testified that on the material night he was on patrol together with PW3 when they spotted and trailed a suspicious motorcycle. They stopped it near a club and searched both the rider and the passenger. They recovered a mobile phone which the suspects could not account for. He confirmed that the motorcycle was registration number KMDQ 816Q. His evidence corroborated that of PW3 in all material respects.

10. PW6, Police Constable John Mukanda, testified that he was summoned to the station by Chief Inspector James Murigu and informed that two suspects had been arrested in possession of a mobile phone. He met PW3 and PW5 at the station and undertook further investigations. He confirmed the ownership of the recovered phone by reference to the purchase receipt produced by the complainant and verified the ownership of the motorcycle used in the robbery. He produced the relevant documentary exhibits in court.
11. At the close of the prosecution case, the trial court found that a prima facie case had been established and placed the appellants on their defence.
12. In his defence, DW1, Elias Kihaha Murunyu, testified that on the material day he had carried a customer to Parklands using his motorcycle. He alleged that the customer persistently questioned him about the absence of a helmet and insurance cover and thereafter directed him to the police station, where he was arrested. He stated that he ordinarily used his motorcycle to carry luggage and denied any knowledge of or association with the co accused. In cross examination, he maintained that he had not been involved in any robbery.
13. DW2, Joseph Njoroge Mungai, testified that on the material day he had gone to visit his ailing grandmother. After alighting from a vehicle, he was approached by two persons in a white motor vehicle, questioned and arrested, and then taken to Parklands Police Station. He denied having been a passenger on a motorcycle and disowned any connection with the recovered phone. In cross examination, he asserted that the charges against him were fabricated by the police.

14. The appeal was canvassed by way of written submission which have been duly considered and there is no need to rehash them.

15. 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”.

16. To sustain a conviction for robbery with violence under section 296(2) of the Penal Code, the prosecution is required to establish the presence of at least one of three statutory ingredients, namely that the offender was armed with a dangerous or offensive weapon or instrument, that the offender was in the company of one or more other persons, or that immediately before, during or immediately after the robbery, the offender wounded, beat, struck or otherwise used or threatened to use actual violence against the complainant. Proof of any one of these elements is sufficient to found a conviction.

17. On the first element, namely whether the offender was armed with a dangerous or offensive weapon, the evidence was clear and uncontroverted. The complainant testified that one of the assailants produced and brandished a knife before forcibly taking her mobile phone. A knife is by its nature a dangerous and offensive weapon capable of causing serious injury or death. The display of the knife was intended to instil fear and to subdue

resistance. This testimony was not shaken in cross examination and there was no contrary evidence from the defence. The court is therefore satisfied that the ingredient of being armed with a dangerous or offensive weapon was duly proved.

18. The second element concerns whether the robbery was committed by more than one person. The complainant stated that the robbery was perpetrated by two persons who were riding on the same motorcycle, one being the rider and the other the passenger who confronted and robbed her. This account was corroborated by PW3, who testified that upon arrest, the suspects were two persons found together on the same motorcycle shortly after the robbery. The presence and participation of more than one offender demonstrates concert and common purpose in the commission of the offence. This element was accordingly proved beyond reasonable doubt.

19. The third element relates to the use or threat of actual violence and the identification of the offenders. The complainant testified that the assailant threatened her with a knife and forcibly deprived her of her phone. The threat of violence was immediate and real. As regards identification, she stated that there was sufficient street lighting, enabling her to see the assailants and to note the registration number of the motorcycle. She later identified one of the appellants by his clothing and identified both appellants after their arrest. Her evidence was reinforced by PW3, who arrested the appellants in possession of the stolen phone shortly after the robbery and positively identified them in court. The circumstances of arrest and the recovery of the stolen property shortly after the offence provided strong corroboration and excluded the possibility of mistaken identity.

20. The court has also considered the defences advanced by the appellants. DW1 alleged that he was innocently carrying a customer and was taken to the police station on account of missing documents, while DW2 claimed that he was arbitrarily arrested after visiting his grandmother and denied any involvement with a motorcycle or the stolen phone. These defences were bare denials unsupported by any independent evidence. They did not explain how the appellants were found together on the same motorcycle in possession of the complainant's phone shortly after the robbery. The explanations were inconsistent with the consistent and corroborated prosecution evidence and did not raise any reasonable doubt. The trial court was therefore entitled to reject them as untruthful.

21. The evidence on record therefore established, independently and cumulatively, that the offenders were armed with a dangerous weapon, acted in the company of another person, and threatened and used violence in the course of the robbery. Each of the statutory ingredients under section 296(2) was satisfied.

22. In light of the foregoing analysis, I am satisfied that the prosecution proved beyond reasonable doubt all the essential elements of the offence of robbery with violence against the appellants. The conviction was sound in both fact and law. The appeal against conviction accordingly lacks merit and is hereby dismissed.

23. With regard to the sentence, the appellants were each sentenced to twenty-five (25) years' imprisonment. During sentencing, the court considered the pre-sentence report, the appellants' mitigation, and being a first offender. The sentence

imposed was therefore lawful and proportionate to the gravity of the offence. I find no justification to interfere with the trial court's exercise of discretion in imposing the said sentence.

24. Accordingly, I find that the appeal lacks merit and is hereby dismissed in its entirety.

Orders accordingly.

**Judgement dated and delivered virtually this 21st day of
January 2026**

**D. KAVEDZA
JUDGE**

In the presence of:

Appellant Present

Mutuma for the Respondent

Karimi Court Assistant.