



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Erono & 2 others v Republic (Criminal Appeal E034 & E149 of 2025
(Consolidated)) [2026] KEHC 408 (KLR) (26 January 2026) (Judgment)**

Neutral citation: [2026] KEHC 408 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL E034 & E149 OF 2025 (CONSOLIDATED)**

**DR KAVEDZA, J
JANUARY 26, 2026**

BETWEEN

**ABDULLAHI LOBALE ERONO 1ST APPELLANT
FRANCIS MWANGI NJENGA 2ND APPELLANT
SIMON NJAU MAINGI 3RD APPELLANT**

AND

REPUBLIC RESPONDENT

*(Being an appeal against the original conviction and sentence delivered on 22nd
January 2025 by Hon. S. Temu (SPM) at Kibera Chief Magistrate's Court,
Criminal Case no. E515 of 2022 Republic vs Abdullahi Lobale Erono & 3 Others))*

JUDGMENT

1. These files were consolidated for the purposes of this judgement. The 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. They were each sentenced to serve thirty (30) 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. On 11th January 2022, PW1, Samson Nzuka Mweke, testified that he was instructed by his supervisor, Abraham Jackson, to withdraw Kshs. 4,000,000 from Eco Bank using an open cheque. He left Finix Casino in a company motor vehicle driven by Belinda Adongo (PW7). They first went to the City Centre branch but, owing to a power outage, PW1 was directed to proceed to the Valley Arcade branch, where he successfully withdrew the cash. As they drove away, they encountered traffic congestion along Valley Road. Three motorcycles approached, one positioning itself in front of their vehicle and another behind. Armed men alighted, pointed guns at PW1 and PW2, ordered the doors opened, and forcibly took the cash and their mobile phones. The assailants fled on the motorcycles. PW1 sought assistance, contacted his employer, and together with PW2 reported the incident at Kilimani Police Station before being referred to Kabete DCI.
5. PW1 later revisited the scene and obtained CCTV footage from a nearby construction site. On 1st April 2022, he attended an identification parade and identified the first appellant. On 8th April 2022, he attended further parades at Dagoretti Police Station and identified the third appellant and, on a separate parade, the second appellant. He testified that the first and third appellant were armed and that the third appellant took the cash, while the second appellant had not covered his face and appeared to direct the others to leave. He produced the cheque used in the withdrawal as an exhibit. In cross-examination, PW1 maintained that he saw the first and second appellant clearly, though he did not note any motorcycle registration numbers.
6. PW2, Jackson Sagiliram Baburam, an accountant at Finix Casino, confirmed instructing PW1 to withdraw the money and later receiving a call informing him of the robbery. He produced the cheque, bank statements, and employment records relating to the second accused, a former employee who had been dismissed in 2019. He stated that PW1 never mentioned the second accused as one of the robbers and that he did not personally witness the theft. He further confirmed that no security guards had accompanied the cash.
7. Chief Inspector John Chapsa (PW4) testified that he conducted an identification parade on 1st April 2022 in respect of the first appellant, who was identified by both PW1 and PW2. He produced the parade forms as exhibits. Chief Inspector Nickson Ngao (PW5) testified that, while investigating an unrelated murder, his team arrested the first appellant at Kawangware on 30th March 2022 and recovered a SIM card. Upon interrogation, the first appellant mentioned the second accused, the 2nd and 3rd appellants as accomplices. Acting on this information, officers arrested the second accused and later the second and third appellants following an ambush and an intervening road accident at Ngong. Various mobile phones, SIM cards and two motorcycles were recovered and inventories produced.
8. PW5, however, conceded that none of the recovered items was directly linked to the robbery, that there were no eyewitnesses other than the complainants, and that no call data or CCTV footage connected the second appellant to the offence. He further confirmed that the complainants did not initially mention the second accused despite knowing him previously, and that no identification parade was conducted in respect of him.
9. Chief Inspector Josphat Muya conducted identification parades on 8th April 2022 for the second and third appellants. He testified that both suspects were placed among similar-looking members of the public, that the complainants independently identified them by touching their shoulders, and that both suspects signed the parade forms without complaint.
10. Belinda Adongo (PW7), the driver, corroborated PW1's account. She testified that one assailant pointed a gun at her and ordered her to open the doors, while another took the cash from PW1. She identified the first appellant as the person who took their phones and the third appellant as the one who



blocked their vehicle and pointed a gun at her. She stated that the incident occurred at about 3.00 p.m., in broad daylight, and that the attackers had not covered their faces. She attended two identification parades and identified the first, second and third appellant. She did not see the second appellant at the scene.

11. Corporal Joseph Nguni, the investigating officer, confirmed that PW1 withdrew Kshs. 4,000,000 on the material day and produced the cheque, bank statements and electronic certificate. He testified that the first appellant was identified at an identification parade and charged, and that the second accused later led officers to the arrest of the second and third appellant. In cross-examination, he conceded that the first appellant merely mentioned the second accused, that the complainants never identified the second accused, that no CCTV footage or phone records linked him to the crime, and that nothing incriminating was recovered from any of the appellant.
12. In defence, the first appellant stated that he was arrested at night by unknown persons and falsely charged. The second accused offered no defence and opted to remain silent. The second appellant stated that he was arrested at his workplace over an unrelated phone matter and later saw the complainant at an identification parade. The third appellant stated that he was a boda boda rider arrested for a traffic offence and later charged in this case.
13. After a full trial, the appellants were convicted while the second accused was acquitted.
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 was required to prove the existence of at least one of the statutory ingredients, namely that the offenders were armed with a dangerous or offensive weapon, that they were in the company of one or more other persons, or that immediately before, during or immediately after the robbery they wounded, beat, struck or threatened to use actual violence against the complainants. Proof of any one of these elements is sufficient to found a conviction.
17. On the first ingredient, the evidence was consistent that the assailants were armed with firearms. PW1 testified that two of the attackers alighted from the motorcycles while armed with guns and pointed them at him and PW7, ordering them to open the doors. PW7 similarly stated that one assailant pointed a gun at her and threatened them with death unless the doors were opened. The presence and brandishing of firearms constituted possession of dangerous and offensive weapons within the meaning of the section. This evidence was not shaken in cross-examination and was not rebutted by the defence. The court is satisfied that this ingredient was duly proved.
18. On the second ingredient, the evidence established beyond doubt that the robbery was committed by more than one person. PW1 and PW7 both testified that three motorcycles were involved and that several men participated in the attack, some positioning the motorcycles to block the vehicle while others alighted and confronted the complainants. The assailants acted in concert and with a common purpose. This element was therefore fully satisfied.



19. On the third ingredient, the use and threat of actual violence was clearly demonstrated. The complainants were confronted at gunpoint, ordered to open the vehicle doors, threatened with death, and forcibly dispossessed of Kshs. 4,000,000 and their mobile phones. The intimidation was immediate, real and overwhelming. The robbery was executed in broad daylight at about 3.00 p.m., in circumstances that left no doubt that violence and threats of violence were employed to subdue the complainants and facilitate the theft.
20. As regards identification, PW1 and PW7 testified that the attackers had not covered their faces and that the incident occurred in daylight, enabling them to see and observe the assailants clearly. Both witnesses independently identified the appellants at properly conducted identification parades. The parade officers testified that the procedures were explained to the suspects, that they freely chose their positions, and that they signed the parade forms without complaint. The identifications were therefore regular and free from suggestion. The evidence of PW1 and PW7 was consistent and mutually reinforcing.
21. The court has carefully considered the defences advanced. The first appellant merely alleged a wrongful arrest. The second appellant claimed he was arrested over an unrelated matter, while the third appellant alleged he was arrested for a traffic offence. These explanations were bare denials and did not displace the direct and positive identification by the complainants. They did not raise any reasonable doubt as to their participation in the robbery.
22. The totality of the evidence established that the offenders were armed with firearms, acted in the company of several persons, and threatened and used violence in the course of the robbery. Each of the statutory ingredients under section 296(2) was independently proved, and cumulatively the evidence left no room for doubt as to the commission of the offence and the participation of the first, third and fourth accused.
23. In the premises, I am satisfied that the prosecution proved beyond reasonable doubt all the essential elements of the offence of robbery with violence against the said accused persons. The conviction was sound in fact and in law. The appeal against conviction is accordingly dismissed.
24. With regard to the sentence, the appellants were each sentenced to thirty (30) 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.
25. Accordingly, I find that the appeal lacks merit and is hereby dismissed in its entirety.

Orders accordingly.

JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 26TH DAY OF JANUARY 2026

D. KAVEDZA

JUDGE

In the presence of:

Appellants Present

Mutuma for the Respondent

Karimi Court Assistant.

