



REPUBLIC OF KENYA



**Orlale v Republic (Criminal Appeal E061 of 2025)  
[2026] KEHC 433 (KLR) (26 January 2026) (Judgment)**

Neutral citation: [2026] KEHC 433 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
CRIMINAL APPEAL E061 OF 2025  
DR KAVEDZA, J  
JANUARY 26, 2026**

**BETWEEN**

**ORLALE NJENGA ORLALE ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal against the original conviction and sentence delivered by  
Hon. S. Temu (SPM) on 23RD April 2025 at Kibera Chief Magistrate's  
Court Criminal Case No. E543 of 2021 Republic vs Orlale Njenga Orlale)*

**JUDGMENT**

1. The appellant was charged and convicted on the offence of Malicious damage to property contrary to Section 339(1) of the Penal Code. The particulars of the offence were on the 19<sup>th</sup> day of February 2019 at Thiongo road, Westlands Sub-County within Nairobi County, jointly, willingly and unlawfully damaged seven mabati structures property valued at Kshs., 706,790/= the property of Jane Wanjiku Njenga. He was sentenced to serve one (1) year probation.
2. Aggrieved, he filed an appeal challenging his conviction and sentence. In his petition of appeal, he challenged the totality of the prosecution's evidence against which he was convicted. He urged the court to quash his conviction and set aside the sentences 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 appeal was canvassed by way of written submissions which have been duly considered and there is no need to rehash them.



5. PW1, Jane Wanjiku Njenga, testified that on 19<sup>th</sup> February 2019 at about 8.00 a.m., she was informed by her tenants that her shops were being demolished. She went to the scene and found her sister, Lydia, her nephew (the appellant), and several other persons present and giving instructions. She stated that the shops stood on land belonging to her late father, who had died intestate. The previous day she had reported the disconnection of electricity and the District Officer had directed that supply be restored. She informed the OCS, Kabete, who dispatched officers to the scene and arrested her sister and the appellant.
6. In cross-examination, PW1 maintained that Lydia and the appellant were present at the site and were directing the demolition.
7. PW2, Philip Kamuyu Njenga, testified that he received a call from PW1 informing him of the demolition. He went to the scene with another woman and found the first accused and her son present. They admitted being responsible for the demolition. He confirmed that the shops belonged to PW1 and that the first and second accused were arrested and taken to Kabete Police Station.
8. In cross-examination, PW2 stated that about ten people were present at the site, including the two accused. Some were supervising while others were carrying out the demolition.
9. PW3, Stephen Kiragu Mwangi, a tenant of PW1, testified that while at his place of business he saw a lorry carrying a container stop outside the premises. The appellant instructed him to remove his belongings as the shops were to be demolished. When the demolition commenced, he telephoned PW1, who advised him to report the matter to the police.
10. In cross-examination, PW3 stated that he lost his business as a result of the demolition.
11. PW4, PC Joseph Kigara, testified that he visited the scene, took photographs, and prepared a report. His evidence corroborated that of PW1, PW2 and PW3.
12. In cross-examination, PW4 stated that the damaged materials were moved behind the demolished structures and that the mabati recovered were aluminium. He confirmed that he was accompanied by PC Nguni and PC Gathoni, the former being the investigating officer.
13. PW5, CPL Nguni Muthiani, the investigating officer then attached to Kabete Police Station, testified that he visited the scene, recorded statements, and carried out investigations which led to the arrest and charging of the appellant. His evidence substantially corroborated that of the other prosecution witnesses.
14. In his defence, the appellant gave an unsworn statement denying the offence. He alleged that the case was fabricated as a result of a family dispute between PW1 and his mother. He stated that he was not present at the scene and that the investigating officer did not place him there. He maintained his innocence throughout.
15. DW1, Charlene Muya, the appellant's wife, testified on oath that on the material day she and the appellant were at home. They only went out after hearing noise and found people moving mabati from the road into a nearby compound. She did not see the appellant take part in any demolition.
16. DW3, Patrick Macharia Kanja, testified that the dispute arose from a family disagreement between the complainant and the appellant's mother and that he was wrongly implicated. He stated that he was present at the scene but did not see the appellant among those demolishing the shops.
17. DW4, Jane Gachuyo Mwaura, corroborated the defence witnesses and stated that she did not see the appellant at the scene during the demolition. In cross-examination, she admitted knowing PW1 and



that PW1 lived near the structures. In re-examination, she confirmed that she saw PW1 at the scene while the demolition was ongoing.

18. Regarding Malicious Damage to Property under Section 339(1) of the Penal Code, the law provides that any person who wilfully and unlawfully destroys or damages property is guilty of an offence punishable by imprisonment for up to five years. The elements of this offence, as established in *Wilson Gathungu Chuchu v Republic* [2018] eKLR, require proof of ownership of the damaged property, proof of its destruction or damage, proof that the accused caused the damage, and proof that the destruction was wilful and unlawful.
19. On ownership, PW1 testified that she had erected the shop structures on her late father's land, who had died intestate. This evidence was corroborated by PW2 and PW3, the latter being a tenant in the said premises. The prosecution therefore proved, beyond reasonable doubt, that the demolished structures belonged to PW1.
20. On proof of destruction, PW1, PW2, PW3, PW4 and PW5 all gave consistent evidence that the shop structures were demolished. PW4 produced photographic evidence confirming the destruction. The defence did not dispute that the structures had been destroyed. Indeed, DW2, DW3 and DW4 acknowledged that demolition had occurred. This element was accordingly proved.
21. On whether the appellant caused the damage, the prosecution witnesses placed him at the scene. In particular, PW3 testified that the appellant instructed him to remove his belongings as the demolition commenced. PW1 and PW2 also stated that the appellant was present and giving directions. The evidence therefore placed the appellant at the locus in quo and connected him to the demolition.
22. On the final element, whether the destruction was wilful and unlawful, the testimonies established that the appellant was not a passive bystander. He was present, issued instructions, and participated in the demolition. There was no evidence of lawful authority or justification. The prosecution demonstrated that the act was deliberate and intentional, and not accidental.
23. The prosecution having proved ownership, destruction, causation and wilfulness, all the essential elements of the offence of malicious damage to property were established beyond reasonable doubt. The appellant's defence did not dislodge the prosecution's case, which was consistent and well corroborated. The conviction is therefore upheld.
24. The appellant was sentenced to one (1) year probation. During sentencing, the court considered the pre-sentence report, the appellant's mitigation, and that he was a first offender and sentenced the appellant accordingly. In the premises, I see no reason to interfere.
25. In the end, the appeal is found to be lacking in merit and is dismissed in its entirety.

Orders accordingly.

**JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 26<sup>TH</sup> DAY OF JANUARY 2026**

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**D. KAVEDZA**

**JUDGE**

In the presence of:

Appellant Present

Mutuma for the Respondent



Karimi Court Assistant.

