



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MIGORI

CRIMINAL APPEAL NO. E007 OF 2023

MICHAEL DAVID ODENG..... APPELLANT

VERSUS

REPUBLIC RESPONDENT

(From the original conviction and sentence in Criminal Case No. 1 of 2019 of the Chief Magistrate’s Court at Migori by Hon. M.O. Obiero – Senior Principal Magistrate)

JUDGMENT

1. Michael David Odeng, the appellant herein, was convicted of the offence of robbery with violence contrary to section 296(1) of the Penal Code.
2. The particulars were that on the 1st day of January 2019, at Rege village, Nyatike sub-county, in Migori County, he robbed Elijah Ondego Ogutu of his Tecno mobile phone valued at Kshs. 4,000.00, and immediately before the time of the said robbery, used actual violence against the said Elijah Ondego Ogutu.
3. The appellant was sentenced to ten years' imprisonment. He was aggrieved and filed this appeal. He raised the following grounds of appeal:
 - a) The court erred by admitting evidence that had no nexus to the appellant and shifted the burden of proof from the prosecution.
 - b) The court erred by finding that the charge had been proved.
 - c) The court erred by imposing an irregular, punitive and harsh sentence.
4. The respondent, represented by learned counsel Melvin Ndombi, opposed the appeal, arguing that it lacked merit.
5. As a first appellate court, I have thoroughly analyzed and evaluated all the evidence presented in the lower court. It is important to note that I did not see or hear any witnesses. In my evaluation, I will be guided by the influential case of **Okeno vs Republic [1972] EA**

6. Immediately after the complainant was robbed, his sister rushed home to inform their mother about the incident and the direction the assailant had taken. Their mother then went to the appellant's residence, where he gave evasive answers regarding the phone. At one point, he claimed he had sold it. Members of the public then responded, apprehending the appellant, and subjected him to some beatings. He eventually produced the phone from his pocket.
7. Michael David Odeng, the appellant, argued in his defence that he was employed at a bar. He stated that he, along with three others and a lady, went there and consumed alcohol. During this visit, they took KShs. 50,000.00 and a phone from the lady, keeping them in the bar. The next day, they discovered the bar had been broken into, and the money and phone had been stolen. On the 1st day of January 2019, he learned that the phone had been recovered from the place where it had been taken for charging. They informed the bar owner. He was arrested when he was taking the phone's owner to the bar owner.
8. The appellant's defence lacks clarity. He does not clarify why the money and phone were confiscated from the patrons at the bar. The trial magistrate's decision to dismiss the defence was justified.
9. When the area chief went to the place where the appellant was detained by the angry mob, he saw the phone in issue next to him. I am satisfied that the appellant's conviction was based on watertight evidence.
10. Section 296 (1) of the Penal Code Provides:

Any person who commits the felony of robbery is liable to imprisonment for fourteen years.
11. The appellant contended that the trial court imposed an irregular, punitive and harsh sentence. An appellate court would interfere with the trial court's sentence only where there exists, to a sufficient extent, circumstances entitling it to vary the trial court's order. These

circumstances were well illustrated in the case of **Nillson vs Republic [1970] E.A. 599**, as follows:

The principles upon which an appellate court will act in exercising its jurisdiction to review sentences are fairly established. The court does not alter a sentence on the mere ground that if the members of the court had been trying the appellant, they might have passed a somewhat different sentence, and it will not ordinarily interfere with the discretion exercised by a trial Judge unless as was said in JAMES Vs. REX (1950), 18 EACA 147, it is evident that the Judge has acted upon some wrong principle or overlooked some material factor. To this, we would also add a third criterion, namely, that the sentence is manifestly excessive in view of the circumstances of the case. R Vs. SHERSHEWSITY (1912) C.CA 28 T.LR 364.

12. The appellant committed a serious offence. He has not provided any reasons to demonstrate that the learned trial magistrate acted upon some incorrect principle or overlooked some material factor. I have no reason to interfere with the sentence.
13. The upshot of the foregoing analysis of evidence is that I find the appeal has no merit. The same is dismissed.

Delivered and signed at Migori, this 27th day of February 2026

KIARIE WAWERU KIARIE

JUDGE