



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA COUNTY

COURT NAME: MOMBASA HIGH COURT

CASE NUMBER: HCCRA/E007/2024

BAKARI BATI VS THE REPUBLIC

JUDGMENT

(Being an appeal from the original conviction in Mombasa MCCR No. 2191 of 2014 delivered on 16/08/2023 by Hon. M.S. Mutuku (CM))

1. Background

1. The Appellant, **Bakari Bati**, together with Ngoja Mwijo Ngoja and Ali Mwangandani, were charged with the offence of **robbery with violence contrary to Section 295 as read with Section 296(2) of the Penal Code**.
2. The particulars of the offence were that on **18th October 2014** at the Ferry area in Likoni Sub-County within Mombasa County, jointly with others not before the Court, while armed with dangerous weapons namely a metal bar, they robbed **Reuben Mutembei Thine** of cash Kshs. 6,000/= and a Tecno mobile phone valued at Kshs. 3,000/= (total Kshs. 9,000/=), and immediately before or after the robbery wounded him.
3. The Appellant pleaded not guilty. After a full trial, he was convicted and sentenced to **twenty (20) years' imprisonment**.
4. Being dissatisfied with both conviction and sentence, the Appellant lodged the present appeal.



2. Grounds of Appeal

5. The Appellant's grounds of appeal, summarized, are that the learned trial magistrate erred in law and fact by:
- Relying on visual identification under unfavourable conditions;
 - Failing to properly apply Section 200 of the Criminal Procedure Code;
 - Denying a fair trial by closing the prosecution case without availing the first report despite request;
 - Holding that the prosecution proved its case beyond reasonable doubt;
 - Failing to consider the defence, thereby occasioning a miscarriage of justice.

3. Duty of the First Appellate Court

6. This being a first appeal, this Court is obligated to re-evaluate and re-analyse the entire evidence and draw its own conclusions, while bearing in mind that it did not have the benefit of seeing and hearing witnesses, as set out in *Okeno v Republic* [1972] EA 32.

4. Prosecution Case

7. **PW1 Reuben Mutembei Thine** testified that on 18/10/2014 at about 10:30 p.m., while heading home from his shop at Likoni Ferry, he was pushed by a man who then assaulted him. The attacker was joined by two others. The first attacker hit him with a metal bar on the right jaw, causing him to fall onto a parked motorcycle. He was robbed of Kshs. 6,000/= and a Tecno mobile phone.
8. PW1 stated that the area had sufficient lighting from Kenya Power and that he **recognized the 1st accused person (the Appellant)** as the one who attacked him. He knew him previously as they operated businesses in the same area.
9. **PW2 Harun Mutembei Kaunga** corroborated PW1's evidence. He witnessed the initial assault, confirmed that the area was well lit, and stated that the Appellant was the first attacker who was later joined by others. PW2 retreated due to being outnumbered and later returned with help.
10. **PW3 Mathew Mwiti** testified that he was informed of the attack and found PW1 lying on the ground bleeding.
11. **PW4 Dr. Julius Maneno Sango** produced the P3 form showing that PW1 sustained serious injuries, including a fractured mandible and loose teeth, caused by a blunt object. The degree of injury was assessed as **maim**.

5. Defence Case

12. The Appellant gave an unsworn statement. He stated that he is a boda boda operator and was arrested on 28/12/2014 alongside others. He denied the



offence and stated he was shocked by the charges.

6. Issues for Determination

13. The main issue for determination is:

- i. Whether the prosecution proved its case beyond reasonable doubt.

7. Analysis and Determination

(a) Ingredients of the Offence

14. The ingredients of robbery with violence under Section 296(2) of the Penal Code were set out in *Johanna Ndung'u v Republic*, namely:

- Being armed with a dangerous weapon; or
- Being in the company of one or more persons; or
- Using or threatening violence.

15. These ingredients are **disjunctive**, and proof of any one is sufficient.

(b) Proof of the Ingredients

16. On whether the offender was armed, PW1 testified that the Appellant used a **metal bar**, and PW4's medical evidence confirmed injuries consistent with blunt force trauma. The absence of physical production of the weapon does not negate the consistent and corroborated evidence on its use.

17. On whether the Appellant was in the company of others, both PW1 and PW2 testified that the attacker was joined by others who participated in the assault. This element was proved.

18. On the use of violence, the medical evidence and eyewitness testimony clearly established that the complainant was violently assaulted and seriously injured.

(c) Identification

19. The Court has carefully examined the issue of identification in light of the principles in *Wamunga v Republic* and *Roria v Republic*.

20. The evidence shows that:

- The incident occurred in a **well-lit area**;
- PW1 **knew the Appellant beforehand** (recognition);
- The interaction was not fleeting;
- PW2 corroborated the identification.



21. The Appellant did not challenge the existence of lighting or offer any plausible explanation to displace the prosecution evidence.
22. The Court is satisfied that this was a case of **positive recognition**, which is more reliable than mere identification of a stranger.

(d) Grounds of Appeal

23. Upon re-evaluation of the entire record:
- The claim on faulty identification is not supported by the evidence;
 - The record shows that the trial court complied with procedural requirements, including those relating to **Section 200 of the Criminal Procedure Code**;
 - The allegation regarding failure to avail the first report does not demonstrate any prejudice suffered by the Appellant;
 - The prosecution evidence was consistent, corroborated, and proved beyond reasonable doubt;
 - The trial court considered the defence and properly rejected it as a mere denial.
24. Accordingly, **none of the grounds of appeal have been proved.**
25. Further, the **record demonstrates that all procedural requirements were adhered to**, and the Appellant received a fair trial.

8. Conclusion

26. The prosecution proved its case beyond reasonable doubt.
27. The conviction was safe, and the sentence lawful.
28. The appeal **lacks merit** and is hereby **dismissed in its entirety.**

9. Orders

29. The conviction and sentence are hereby **upheld.**
30. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MOMBASA THIS
16TH DAY OF APRIL 2026.**

WENDY KAGENDO

JUDGE



In the Presence of:

The Appellant in person

Mr. Sirima for the State

Bebora – Court Assistant

SIGNED BY/FOR:
HON. LADY JUSTICE WENDY MICHENI



□ THE JUDICIARY OF KENYA ★

**HON. LADY JUSTICE WENDY
MICHENI**

Mombasa High Court
High Court Criminal
Date: 2026-04-16 17:41:48

