

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KIBERA**  
**CRIMINAL APPEAL NO. E122 OF 2025**

**STEPHEN  
KALONZO.....APPELLANT**

**VERSUS**

**REPUBLIC.....**  
**RESPONDENT**

*(Being an appeal against the conviction and sentence imposed by Hon. Njagi (S.P.M) on 31<sup>st</sup> July 2025 at Kibera Chief Magistrate's Court Criminal Case no. 2119 of 2021 Republic vs Stephen Kalonzo)*

**JUDGEMENT**

1. The appellant was charged and after a full trial convicted on two counts of offences. Count I, attempted robbery with violence contrary to section 297 (2) of the Penal Code and Count II, being in possession of firearm contrary to section 89 (1) of the Penal Code. In count I, he was sentenced to death and count II, seven years imprisonment to run concurrently.
2. Being aggrieved, he filed an appeal challenging his conviction and sentence.
3. In his appeal, he raised twelve grounds which have been coalized as follows: He challenged the totality of the prosecution's evidence against which he was convicted. He argued that his defence was not considered. Further, that the sentence imposed was harsh and excessive. He prayed that the conviction be quashed and the sentence imposed by the trial court be set aside.
4. As this is a first appeal, I am required to conduct a fresh evaluation of all the evidence and come to an independent

conclusion as to whether or not to uphold the conviction and sentence. This task must have regard to the fact that I never saw or heard the witnesses testify (see **Okeno v Republic [1973] EA 32**).

5. The Prosecution in this regard called five witnesses to prove their case. PW1, Onesmus Marigi, testified that on 29<sup>th</sup> August 2021 at about 10.30 pm, while closing his shop, a customer requested a cigarette. As he returned with the cigarette, he found the customer on the phone. Shortly thereafter, two men approached and turned back. One of them, armed with a gun, ordered him to raise his hands. PW1 feigned locking the shop, drew a panga concealed in his jacket, and cut one of the assailants. The said assailant fired three shots at him, causing him to scream, although the bullets did not strike him as they deflected off the ground. He reported the incident to the police the following day and identified one of the attackers as Stephen Kalonzo, whom he knew well from the local pool area.
6. PW1 further testified that the initial customer was one Kavindu and that the appellant, together with another person, attacked him. He maintained that he clearly saw and recognised the appellant, and that the appellant ordered him to raise his hands before fleeing when PW1 resisted. He also stated that CCTV footage captured the incident, confirming that the appellant was among those present, while the other assailant, identified as Tom, was the one armed with the gun.
7. PW2, PC Issac Lutatwa, testified that on 23<sup>rd</sup> September 2021, while on patrol, they received information that one of the

suspects had been spotted. Acting on the description earlier provided by the complainant, they proceeded to the area and arrested the appellant, Stephen Kalonzo. Upon a search, they recovered a homemade gun and two rounds of ammunition, which were produced as exhibits.

8. PW3, No. 101320 PC Mark Muruha, corroborated the testimony of PW2. He stated that they effected the arrest of the appellant on 23<sup>rd</sup> September 2021 based on the description given by the complainant. A search conducted on the appellant led to the recovery of a homemade pistol and two rounds of ammunition. Although the complainant was not present at the point of arrest, he was within close proximity.
9. PW4, No. 235220 Chief Inspector James Onyango, a firearms examiner, testified as to his qualifications and the examination conducted on the recovered firearm. He concluded that the item was an imitation firearm, lacking a chamber and incapable of discharging ammunition, but nonetheless falling within the definition of a firearm under the Firearms Act. He prepared a report dated 22<sup>nd</sup> December 2021, which was produced in evidence. No spent cartridges were submitted for examination.
10. PW5, PC Tom Mwema, the investigating officer, testified that the matter was reported by the complainant and investigations were commenced. He recorded witness statements and forwarded the recovered firearm for ballistic examination. He produced the exhibit memo and the firearm in evidence. He confirmed that the complainant positively identified the appellant, whom he knew prior to the incident, and that there was sufficient lighting at the

scene. He further stated that although CCTV footage was retrieved, it was not produced in court. He maintained that it was the appellant's accomplice who discharged the firearm during the incident.

11. In his defence, the appellant, Stephen Kalonzo, gave unsworn testimony. He stated that on 26<sup>th</sup> September 2021, while in Kawangware taking tea, he was arrested by four men. He alleged that he was coerced to admit knowledge of certain individuals, which he denied. He further claimed that the investigating officer demanded Kshs. 5,000/= from him and, upon his failure to comply, he was charged with the offences.
12. The appeal was canvassed by way of written submissions which have been duly considered and there is no need to rehash them.
13. It is an offence of; attempted robbery with violence contrary to section 297 (2) of the Penal Code. The subject provisions state that: -

**(2) 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 assault, he wounds, beats, strikes or uses any other personal violence to any person, he shall be sentenced to death”**

14. It suffices to note that, section 297 (2) of the Penal Code cannot be read independent of; section 297 (1) thereof, which states as follows:

**(1) Any person who assaults any person with intent to steal anything, and, at or immediately before or immediately after the time of the assault, uses or threatens to use actual violence to any person or property in order to obtain the thing intended to be stolen, or to prevent or overcome resistance to its being stolen, is guilty of a felony and is liable to imprisonment for seven years.**

15. The aforesaid provisions thus require that, for the offence of attempted robbery with violence to be established, it must be proved inter alia that the robber; -

- a) Attempted to rob the victim;
- b) Was armed with a dangerous or offensive weapon;
- c) Was in the company of one or more other person(s);
- d) Assaulted, wounded, beat or threatened to use violence against the victim, in order to steal or resist an attempt to thwart the act of stealing.

16. I have re-evaluated the evidence on record, as is required of a first appellate court, and drawn my own independent conclusions. There is no dispute that on the material night the complainant was at his shop when he was confronted by more than one assailant. One of them was armed with what appeared to be a firearm and ordered the complainant to raise his hands. The complainant resisted by arming himself with a panga, whereupon a shot was fired in his direction. The evidence establishes that there was a violent confrontation accompanied by threats to the complainant's life.

17. The prosecution evidence further shows that the complainant promptly reported the matter and consistently identified the appellant as one of the assailants, a person he knew prior to the incident. PW2 and PW3 subsequently acted on that description and arrested the appellant. Upon arrest, a homemade pistol and ammunition were recovered from him. PW4 confirmed, upon examination, that the recovered item was an imitation firearm.
18. All the prosecution witnesses were consistent that a firearm or object resembling a firearm was used during the incident to threaten the complainant. Although the ballistic evidence established that the recovered item could not discharge ammunition, the complainant's testimony remained that he was threatened and a shot was fired during the encounter. The absence of spent cartridges notwithstanding, the evidence demonstrates the existence of a threat of violence.
19. As regards the number of assailants, the complainant testified that he was attacked by more than one person, namely the appellant and another individual. He was categorical that the appellant was among those who confronted him. PW2 and PW3 did not witness the incident but confirmed that they arrested the appellant based on the description given. Their evidence does not directly corroborate the presence of the other assailant but places the appellant within the chain of events.
20. Corroboration of evidence necessary in criminal cases. The meaning of corroboration as defined or stated in the Nigerian case of **Igbine vs. The State {1997} 9 NWLR (Pt.519) 101 (a), 108** is thus: -

*"Corroboration means confirmation, ratification, verification or validation of existing evidence coming from another independent witness or witnesses".*

21. In **Mukungu vs. Republic [2002] 2 EA 482**, the Court of Appeal citing **Mutonyi vs. Republic [1982] KLR 2003**, held that:

*"An important element in the definition of corroboration is that it affects the accused by connecting him or tending to connect him with the crime, confirming in some material particular not only the evidence that the crime has been committed but also that the accused committed it: (See Republic vs. Manilal Ishwerlal Purohit [1942] 9 EACA 58, 61.)"*

22. Applying the foregoing principles, the complainant's evidence identifying the appellant as one of the assailants is supported by the recovery of the imitation firearm from the appellant shortly after the incident and the prior acquaintance between the complainant and the appellant. This evidence tends to connect the appellant to the offence. However, the evidence as to the involvement of any accomplice rests solely on the complainant's account and lacks independent corroboration.

23. The final issue is whether the appellant, either alone or jointly with another, attempted to commit the offence charged. The evidence demonstrates that the assailants confronted the complainant, threatened him with what appeared to be a firearm, and ordered him to raise his hands. The conduct of the assailants,

viewed objectively, constituted a clear threat of violence directed at the complainant.

24. I therefore find that the prosecution established that the appellant participated in an unlawful and violent confrontation with the complainant, during which threats of violence were issued. The elements of the offence as charged were, to that extent, proved beyond reasonable doubt as against the appellant.
25. In count II, the charge of being in possession of a firearm contrary to Section 89(1) of the Penal Code, the evidence on record was cogent. PW2 and PW3 testified that upon arrest of the appellant, a homemade pistol together with two rounds of ammunition were recovered from his possession. This evidence was consistent and unshaken.
26. PW4, the firearms examiner, confirmed upon examination that the recovered item was an imitation firearm within the meaning of the Firearms Act. Although it lacked a chamber and was incapable of discharging ammunition, it was designed to resemble a firearm and was therefore a prohibited item under the Act. Its nature was such as to instil fear and was consistent with the complainant's account that he had been threatened with a gun during the incident.
27. The appellant did not adduce any evidence to demonstrate lawful authority or licence to possess the said firearm or imitation thereof. His possession of the same, shortly after the incident and in the circumstances described by the prosecution witnesses, firmly connects him to the offence.

28. In the premises, the prosecution proved beyond reasonable doubt that the appellant was in unlawful possession of a firearm within the meaning of Section 89(1) of the Penal Code. The conviction on Count II was therefore proper and is upheld.
29. The appellant was sentenced to death in count I and seven years imprisonment in count II to run concurrently.
30. During the sentencing proceedings, the court considered the appellant's mitigation, that he was a first offender, the pre-sentence report, and the seriousness of the offence he had been convicted of.
31. Section 329 of the Criminal Procedure Code, gives judges and magistrates, in appropriate cases to consider mitigation and mete out a sentence that fits the offence committed despite another sentence being provided for under the Act in which the offence is prescribed. In that regard, I find that the sentence meted out was lawful however that it was excessive.
32. Therefore, the appeal on the sentence succeeds. The death sentence imposed in count I, is hereby substituted with a sentence of twenty (20) years imprisonment. The sentences in counts II is maintained. Consequently, the sentence is as follows:
- I. In count I, the appellant is sentenced to serve twenty (20) years imprisonment.
  - II. The sentence of seven (7) years imprisonment imposed in Count II is maintained.
  - III. The sentences shall run concurrently from the date of conviction.
- Orders accordingly.

**Judgement dated and delivered virtually this 26<sup>th</sup> day of  
March 2026**

**D. KAVEDZA  
JUDGE**

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