

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KIBERA
CRIMINAL APPEAL NO. E156 OF 2025

KELVIN LABAN CHISOMBE.....
.....APPELLANT

VERSUS

REPUBLIC.....
.....RESPONDENT

(Being an appeal against the original conviction and sentence delivered by Hon. A.N Ogonda (P.M) on 28th October 2025 at Kibera Chief Magistrate's Court Criminal Case No. E.1891 of 2024 Republic vs Kelvin Laban Chisombe)

JUDGEMENT

- 1.The appellant was charged and convicted with two counts of offences. Count I, robbery with violence on count I, contrary to section 296(2), and grievous harm contrary to section 234 of the Penal Code. In count II, the appellant was charged with the offence of grievous harm contrary to section 234 of the Penal Code. In Count I, he was sentenced to serve twenty-five (25) years imprisonment while in Count II, he was sentenced to serve ten (10) years imprisonment to run concurrently.
- 2.Aggrieved, he filed the present 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 complained that the sentence imposed was unlawful. He urged the court to quash his 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 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 prosecution called five witnesses in support of its case. PW1, Joyce Nzangi Mwendwa, the Complainant, testified that on 8th September 2024 at about 9.30 pm, while closing the gambling shop where she worked, she was approached from behind by a man who slapped her on the buttocks. She turned and saw the assailant clearly under illuminating street lighting. As she continued locking the premises, the assailant grabbed her handbag and became violent when confronted. He pushed her into an open drainage ditch, pinned her down, and bit her right thumb.
5. PW1 raised alarm, attracting PW2, Felix Kilonzo, who attempted to intervene. According to PW1, about five other men joined the assailant, overpowered PW2, and assisted the attacker. The assailant further bit PW1 on the right ear, causing her to bleed, before escaping with her Tecno Spark 7 mobile phone, Kshs. 500/= in cash, and a phone charger.
6. PW1 sought first aid at a chemist and reported the incident at Muthangari Police Station. She was later treated at Gatina Dispensary. She produced treatment notes, a P3 Form, and a receipt for the stolen phone.
7. PW1 told the court that a nearby club employee who had witnessed the ordeal identified the assailant as “Kelvin”, whose identity was later relayed to police, leading to his arrest. She identified the appellant before Court as the assailant. She further stated that a potential witness, Marilyn Amolo, was allegedly attacked and threatened before testifying, forcing her to flee.

8. On cross-examination, PW1 maintained that the area was well lit, that she recognised the appellant upon arrest, and that no identification parade was conducted. She also confirmed that the stolen phone was never recovered.
9. PW2, Felix Kilonzo, testified that on the material night he had been at the gambling shop shortly before closure. After leaving the premises, he observed a man slap PW1 on the buttocks and attempt to snatch her phone. Realising that PW1 was in distress, he intervened and grabbed the assailant. He was, however, struck from behind by another person, causing him to release the attacker. PW2 stated that the assailant strangled him with a sweater, punched him in the eye, and threw him into a ditch. He escaped and observed the incident from a short distance. He testified that the assailant attacked PW1 again and searched her handbag while members of the public watched. PW2 stated that the assailant's cap fell off during the incident, enabling him to see his face clearly under bright security lights.
10. After the attack, PW2 assisted the injured complainant and later identified the appellant at the police station. On cross-examination, he maintained that although the appellant was previously unknown to him, he had clearly seen him during the incident.
11. PW3, Dr. Kamau Mariga, a police surgeon, testified that he examined PW1 on 10th September 2024 and completed the P3 Form. He observed human bite injuries on her right ear and right thumb consistent with blunt trauma. He classified the injuries as grievous harm. He produced the treatment notes and P3 Form as exhibits.

- 12.PW4, Police Constable Franklin Aura Okune, testified that acting on instructions from the investigating officer, he proceeded to Kawangware and arrested the appellant at Congo Stage as he prepared to board a vehicle. The appellant was escorted to Muthangari Police Station. PW4 confirmed that no stolen property was recovered from the appellant and that he did not witness the offence. He denied allegations that he had previously contacted the appellant or arrested him at a club.
- 13.PW5, Police Constable Vela Makungu, the investigating officer, testified that she received the report from PW1, facilitated her medical treatment, and coordinated investigations leading to the appellant's arrest after information was received that he intended to flee. She confirmed that both PW1 and PW2 identified the appellant as the assailant. PW5 produced the receipt for the stolen Tecno Spark 7 mobile phone. She further testified that some witnesses declined to record statements due to fear of the appellant and his associates.
- 14.She visited one prospective witness, Marilyn Amolo, at Kenyatta National Hospital after she had allegedly been assaulted. Although witness protection was offered, the witness reportedly fled to western Kenya and could not be traced. PW5 confirmed that no identification parade was conducted because the complainant was present during the arrest and had already identified the appellant.
- 15.In his unsworn defence, the appellant denied the charges and alleged that he had been falsely implicated following a disagreement with PW4 over broken alcohol bottles at a club where he carried out delivery work.

16. After a full trial, the appellant was convicted accordingly on both counts.

17. The appeal was canvassed by way of written submissions by the parties, which have been duly considered. 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”.

18. The first ingredient of the offence of robbery with violence is proof of theft. PW1, Joyce Nzangi Mwendwa, testified that during the attack, her Tecno Spark 7 mobile phone, cash amounting to Kshs. 500/= and a phone charger were stolen. Her evidence was corroborated by the purchase receipt for the mobile phone produced by PW5, the investigating officer, as Prosecution Exhibit-3. PW2 equally testified that he saw the assailant ransack PW1's handbag during the attack. The element of theft was therefore sufficiently established.

19. The second ingredient is proof that actual violence was used or threatened immediately before, during or after the robbery. PW1 testified that the assailant violently threw her into an open drainage ditch, pinned her down, and bit her on the right thumb and right ear, causing injuries resulting in bleeding. PW2 confirmed witnessing the assault and further testified that he himself was attacked, strangled and thrown into a ditch when he

attempted to intervene. The medical evidence tendered through PW3 confirmed that PW1 sustained human bite injuries on the right ear and thumb, which were classified as grievous harm. The Court is therefore satisfied that actual violence was used in the course of the robbery.

20. The third ingredient requires proof that the offender was in the company of one or more persons. PW1 testified that shortly after she raised alarm, about five men gathered at the scene and appeared to be acting together with the assailant. She stated that the group overpowered PW2 when he attempted to rescue her and that she heard them asking whether the assailant had managed to take her phone. PW2 similarly testified that he realised the assailant was not acting alone after he was struck from behind by another person during the struggle. This evidence sufficiently established that the robbery was committed jointly with others not before Court.

21. The final ingredient concerns the identification of the offender. PW1 testified that the area was well lit by street lights and that she saw the assailant's face clearly during the prolonged attack. She further stated that a nearby club employee identified the assailant by the name "Kelvin", information that led to his arrest. PW2 equally testified that the assailant's cap fell off during the incident, enabling him to clearly observe his face under bright security lights. Both PW1 and PW2 positively identified the Accused person as the assailant.

22. Although no identification parade was conducted, the witnesses maintained that they had ample opportunity to observe the Accused during the incident.

23.The Court has considered the Accused's unsworn defence in which he denied involvement and alleged that he had been framed following a disagreement with PW4. That defence remained a bare denial and did not displace the direct, consistent and corroborative evidence adduced by the prosecution witnesses. I am satisfied that the prosecution proved all the ingredients of the offence of robbery with violence contrary to section 296(2) of the Penal Code beyond reasonable doubt. I accordingly find the conviction by the trial court in Count I was proper and is upheld.

24.In count II, the appellant was charged with offence of grievous harm contrary to section 234 of the Penal Code. Section 234 provides as follows:

“Any person who unlawfully does grievous harm to another is guilty of a felony and is liable to imprisonment for life.”

25.Grievous harm is defined under section 4 of the Penal Code as harm which amounts to a maim or seriously injures health. The evidence on record established this element. PW1 sustained human bite injuries on the right ear and right thumb during the attack. She testified that the injuries caused bleeding and pain, necessitating medical treatment immediately after the incident. PW3, the police surgeon, confirmed that the injuries were consistent with human bites and blunt trauma and classified them as grievous harm in the P3 Form produced before Court.

26.PW1 positively identified the appellant as the person who assaulted and injured her. She testified that the area was well lit by street lights and that she saw the assailant clearly during the prolonged attack. Her evidence was corroborated by PW2, who

witnessed the assault and confirmed seeing the Accused attack the Complainant. The medical evidence adduced by PW3 was consistent with PW1's account of the assault. The injuries inflicted upon PW1 were unlawful and intentional, and no lawful justification was offered by the defence.

27. I am therefore satisfied that the prosecution proved the offence of grievous harm beyond reasonable doubt. The conviction on that count is accordingly proper and is hereby affirmed.

28. In Count I, the appellant was sentenced to serve twenty-five (25) years imprisonment, while in Count II he was sentenced to ten (10) years imprisonment. From the sentencing proceedings, the trial court considered the pre-sentence report, the appellant's mitigation and law.

29. The sentences imposed were therefore lawful and proportionate to the gravity of the offences committed. I find no basis upon which this Court can interfere with the exercise of that discretion.

30. In the premises, the appeal lacks merit and is hereby dismissed in its entirety.

Orders accordingly.

**Judgement dated and delivered virtually this 14th day of
May 2026**

**D. KAVEDZA
JUDGE**

In the presence of:

Appellant Present

Kamau for the Respondent

Karimi Court Assistant.