



REPUBLIC OF KENYA



**Chege v Republic (Criminal Appeal E033 of 2024)  
[2025] KEHC 501 (KLR) (28 January 2025) (Judgment)**

Neutral citation: [2025] KEHC 501 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
CRIMINAL APPEAL E033 OF 2024  
DR KAVEDZA, J  
JANUARY 28, 2025**

**BETWEEN**

**JOSEPH KAMAU CHEGE ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal against the original conviction and sentence delivered by  
Hon. R. Kitagwa (PM) on 6th October 2023 at Kibera Chief Magistrate's  
Court criminal case no. 1156 of 2021 Republic v Joseph Kamau Chege)*

**JUDGMENT**

1. The appellant was charged and after a full trial convicted for on two counts of robbery with violence contrary to section 296(2) of the *Penal Code*. He was convicted to serve forty-five (45) years imprisonment on each count to run concurrently.
2. Being aggrieved, he filed an appeal, challenging his conviction and sentence. In the undated petition of appeal received on 10<sup>th</sup> June 2024 and amended grounds, the appellant raised 8 grounds which have been coalized as follows: He challenged the totality of the prosecution's evidence against which he was convicted. He argued that the trial court failed to consider his defence. In addition, he contended that the sentence imposed was harsh and excessive.
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.



5. The prosecution evidence was as follows: On 9/06/2021 at around 8:00 pm, PW1 Esther Wambui Juma and PW2 Hassan Hamisi Mwakanango were walking near Iqra FM in the Kilimani area when a motorcycle with three riders stopped near them. Two passengers, described as one tall and light-skinned and the other short and dark-skinned, alighted and brandished guns, ordering them to lie down. The robbers demanded their belongings, taking PW1's iPhone 6 Plus, a handbag containing her ID, bank cards, and Kshs. 2,000, and PW2's phone, watch, bag, and Kshs. 2,000.
6. Shortly after the robbery, PW1 and PW2 learned the motorcycle was involved in an accident nearby. At the scene, they recovered some of the stolen items, including PW1's damaged phone and bag, while the suspects had fled. The motorcycle, registration KMFB 787H, was identified as belonging to PW3 Juma Ali Musa, who had employed the appellant as a boda boda rider.
7. PW1 and PW2 testified that the appellant was the motorcycle rider during the robbery and that there was sufficient light for identification. They noted that no identification parade was conducted. PW3 confirmed that the appellant was the operator of the motorcycle, and the appellant informed him of the accident shortly after the incident.
8. During cross-examination, PW2 clarified that the appellant did not personally attack them or carry a weapon but was the rider facilitating the robbery. PW3 added that the appellant refused to accompany him to explain the incident after calling to report the accident.
9. PW4, Dennis Ambao, testified that on 9/06/2021 at around 8:40 pm, his vehicle was hit by a fast-moving motorcycle at the Adams area traffic lights on Ngong Road. The motorcycle fell, and a crowd began forming. He left the scene to report the accident at Karen Police Station, later learning from Kilimani Police Station that the motorcycle occupants were robbers.
10. PW5, Police Constable Ronald Kiprotich, testified that on the same evening, he responded to a report of an accident involving a red Boxer motorcycle, registration KMFP 787H, at Adams. The motorcycle was abandoned, and the suspects had fled. He towed the motorcycle to Kilimani Police Station. The appellant later reported to the station, claiming he was the rider but blamed the passenger for the robbery.
11. PW6, Naftthali Kathurimi Mbogu, testified that he was called to tow the motorcycle involved in the incident to Kilimani Police Station.
12. PW7, Sgt. John Wambua testified that on 22/04/2022, he photographed the red Boxer motorcycle at Kilimani Police Station, capturing its front, back, and chassis numbers. He produced the photographs as evidence.
13. PW8, Police Constable (W) Jane Wanjiru, testified as the investigating officer in this case. She stated that the robbery occurred on 9/06/2021 at 8:30 pm near IQRA FM Building, involving a motorcycle, registration KMFB 787H, ridden by the appellant and carrying two passengers. The passengers brandished pistols, ordering the complainants to lie down and stealing an iPhone, cash, and other valuables from PW1 and a phone, watch, and cash from PW2. The robbers fled on the motorcycle, which later collided with a vehicle at Adams, forcing them to abandon it.
14. The motorcycle's owner (PW3) confirmed that the appellant had been using it. The appellant later came to the station and was arrested. PW8 testified that no identification parade was conducted, as the complainants were unable to identify the robbers due to threats. She submitted the motorcycle's logbook as evidence.
15. The appellant testified in his defence, stating that on 9/06/2021, he went to work and later visited his uncle at Kenyatta National Hospital (KNH). He claimed that he allowed another rider, identified as



Kadenge, to use the motorcycle while he remained at KNH until 3:00 pm. Later, after smoking two rolls of bhang, he received a call around 8:00 pm from Kadenge, informing him that the motorcycle had been involved in an accident.

16. The appellant called his boss, PW3, to inform him that the motorcycle was at Adams and had been towed. At the scene, they learned that the motorcycle was involved in a criminal incident near Iqra FM. The appellant testified that PW3 was too angry to listen to him. Subsequently, he went to Kilimani Police Station to explain, but the officers allegedly refused to hear him out. The appellant denied any involvement in the robbery.
17. The appeal was canvassed by way of written submissions by the parties which have been duly considered. In counts, I and II the appellant was convicted of the offence of robbery with violence. 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. As regards the offence of robbery with violence, the complainants, PW1 and PW2, both gave consistent and compelling testimony regarding the events of the robbery. They stated that they were accosted by three individuals on a motorcycle. Two of these individuals brandished firearms and ordered the complainants to lie down. They were threatened with being shot if they did not comply. PW1 handed over her iPhone, valued at Kshs. 48,000, and other personal belongings. PW2 similarly surrendered his phone, watch, and cash. Both complainants identified the appellant as the rider of the motorcycle involved in the robbery.
19. After the robbery, the victims were informed that the robbers had been involved in an accident a short distance away. They rushed to the scene and found the motorcycle abandoned, although the robbers had fled. The police later recovered the stolen phone, which had been damaged, and linked the motorcycle to the accused, who was identified as the rider. PW3, the owner of the motorcycle, confirmed that it was the same motorcycle the appellant had been riding at the time of the incident.
20. The appellant’s defence was that he was not involved in the robbery. He claimed that he had allowed another rider, whom he identified as Kadenge, to use the motorcycle while he was at Kenyatta National Hospital visiting a relative. He further claimed that he was unaware of the criminal activity involving the motorcycle until he received a call about the accident. He did not provide any credible evidence to substantiate this alibi, and the prosecution’s case remained unshaken.
21. On the existence of violence or a threat of violence, the evidence presented before the court established that the complainants were robbed of their belongings while being threatened with firearms. The use of violence was evident in the way the complainants were physically restrained and forced to hand over their property. The identification of the accused as the rider of the motorcycle involved in the robbery was corroborated by the testimony of both complainants, PW3 (the motorcycle owner), and the police.
22. The appellant’s defence was not supported by any credible evidence. His claim that he was not involved in the robbery was inconsistent with the facts and contradicted the prosecution’s evidence, which was consistent, clear, and reliable.
23. Based on the evidence adduced, I find that the prosecution proved its case beyond reasonable doubt. The appellant was indeed involved in the robbery with violence against PW1 and PW2. He was armed



with a dangerous weapon, and he used force to take their property. The defence provided by the appellant did not hold water and was rightly rejected by the trial court. The conviction on both counts was therefore proper.

24. On sentence, the appellant was sentenced to forty-five years on each count to run concurrently. 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 the sentence imposed shatters all hopes of the appellant for rehabilitation or having another chance to start afresh.
25. Therefore, the appeal on the sentence succeeds. The sentence of forty-five years imprisonment on each count is hereby substituted with a sentence of twenty (20) years imprisonment on each count to run from 10<sup>th</sup> June 2021 the date of his arrest pursuant to section 333(2) of the *Criminal Procedure Code*.  
Orders accordingly.

**JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 28<sup>TH</sup> DAY OF JANUARY 2025.**

**D. KAVEDZA**

**JUDGE**

In the presence of:

Appellant Present

Mutuma for the Respondent

Achode Court Assistant

