



REPUBLIC OF KENYA



KENYA LAW
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**Abdi v Republic (Criminal Appeal E052 of 2024)
[2025] KEHC 1825 (KLR) (25 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 1825 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL E052 OF 2024
DR KAVEDZA, J
FEBRUARY 25, 2025**

BETWEEN

RAJAB ABDI APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal against the original conviction and sentence delivered
by Hon. Murage (P.M) on 11th March 2024 at Kibera Chief Magistrate's
Court Criminal Case no. E2700 of 2021 Republic vs Rajab Abdi)*

JUDGMENT

1. The appellant was charged with the offence of robbery with violence contrary to section 296 (2) of the [Penal Code](#), Cap 63 Laws of Kenya. After a full trial, he was sentenced to death. Being aggrieved, he filed an appeal challenging his conviction and sentence.
2. In his petition of appeal, he raised grounds, which have been coalized as follows: He challenged the totality of the prosecution's evidence against which he was convicted. He contended that his defence was not considered by the trial court. He argued that he was not appointed a legal representative as is mandatory for capital offences that attract the death penalty.
3. 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”.



4. The issues for consideration by this court are whether the appellant was positively identified and whether the prosecution did prove its case beyond reasonable doubt leading to a proper conviction and sentence.
5. 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)
6. The prosecution's case was that on 26th December 2021, Edwin Orege (PW1), a resident of Makongeni, Kibra, testified that around 10:00 AM, the appellant, Rajab, a fellow tenant, entered his residence armed with a panga. The appellant demanded his phone and money, taking a Galaxy S8 (valued at Kshs 15,000) and Kshs 4,500 in cash before locking PW1 inside and fleeing. PW1 later identified and pursued him upon his arrest.
7. Calman Orange (PW2), present during the incident, corroborated PW1's testimony. He stated that the appellant, armed with a panga, demanded money, damaged a table, and stole two phones, including PW2's "mulika" (valued at Kshs 1,500). PW2 denied that the appellant was authorized to lock the house for unpaid rent and described his habitual theft. A neighbour later unlocked the door.
8. PC Bernard Maina (PW3) of Kibra Police Station confirmed that PW1 and PW2 reported the incident, stating that the appellant had entered armed, threatened them, and stolen their property. The appellant was arrested and charged, though the stolen items and panga were not recovered. PW3 noted that the appellant had prior robbery arrests and a pending similar case in Court 9.
9. After the prosecution closed its case, the appellant was found to have a case to answer and was placed on his defence. He stated that he is an interior designer and, on the material date, he was at his workplace in Kasarani Santos until 4:00 p.m. He then went to Gabi's Club for a quotation before heading to Joska to visit his mother.
10. After an argument with his mother, she allegedly warned him that his cousin, Abdi Taib, would deal with him. He then stayed at his sister's place overnight. Upon returning to Kibra on 30th December 2021, he was arrested, and the police found Bhang in his possession. He was taken to Kibra Police Station, where he encountered Abdi Taib, who ignored his greeting. During cross-examination, he was unable to recall who had given him work in Kasarani.
11. The offence of robbery with violence under section 296(2) of the *Penal Code* is proved when an act of stealing is committed in any of the following circumstances, that is to say, the offender was armed with a dangerous weapon or that he was in the company of one or more persons or that at immediately before or immediately after the time of the robbery the offender beats, strikes or uses other personal violence to any person (see *Dima Denge Dima & others v Republic* NRB CA Criminal Appeal No 300 of 2007 [2013]eKLR and *Oluoch v Republic* [1985] KLR 549)
12. The key issue for determination is whether the appellant was positively identified and whether the prosecution proved its case beyond reasonable doubt. The evidence shows that PW1 and PW2 were attacked by the appellant, who was armed with a panga. He threatened to cut them into pieces and stole a Galaxy S8 and a 'mulika' phone.
13. PW1 and PW2, who knew the appellant as their landlord's son, positively identified him. The attack occurred during the day, eliminating any doubt about his identity. Their testimonies remained consistent and unshaken during cross-examination, providing credible and direct evidence of visual identification.



14. The prosecution also had to prove that the appellant was armed with a dangerous weapon. PW1 and PW2 testified that the appellant used a panga, even damaging a table, thereby demonstrating the use of violence. The evidence establishes that force was used to rob the complainants.
15. I have also considered the defence put forward by the appellant and hold that it did not displace the otherwise strong culpatory evidence adduced by the prosecution. I hold that the prosecution proved its case to the required standard of proof on the charge of robbery with violence against the appellant beyond reasonable doubt. The conviction by the trial court is therefore affirmed.
16. On sentence, the appellant was sentenced to death. In 2016, the judiciary developed the Sentencing Guidelines as a response to the challenges experienced by judges and judicial officers. The Guidelines were developed pursuant to section 35(2) of the *Judicial Service Act* 2011. The guidelines collated the principles of law that should guide courts in the exercise of their discretion so that sentences for analogous circumstances are delivered transparently and consistently.
17. Since the formulation of the SPGs of 2016, the criminal justice landscape around sentencing has evolved significantly, prompting NCAJ to review (The Sentencing Policy Guidelines 2023) the Guidelines to align with the emerging jurisprudence and make them more responsive to the justice needs of Kenyans. The revised SPGs provide guidance in sentencing where the mandatory minimum and maximum sentences are concerned, as well as sentencing hearings.
18. Consequently, the evolution of law and jurisprudence should grow in tandem with the *Constitution* while acknowledging the judiciary guidelines on sentencing.
19. Flowing from above, it is equally my view that a sentence imposed on a convict has to meet the objectives of retribution, deterrence, rehabilitation, restorative justice, community protection, and denunciation. Therefore, it is no longer necessary or desirable to hold a convict for an indeterminate amount of time as this does not meet the objectives of the sentencing policy guidelines.
20. In this case, it appears that in determining the sentence, the learned trial magistrate's decision was primarily influenced by the mandatory nature of the applicable law. This jurisprudence has since shifted after the promulgation of the *Constitution* of Kenya, 2010 (See: *Manyeso v Republic* Criminal Appeal 12 of 2021) [2023] KECA 827 (KLR) (7 July 2023) and (*Evans Nyamari Ayako v Republic* Criminal Appeal No 22 of 2022 Kisumu Court of Appeal)
21. I hereby set aside the death sentence imposed and substitute it with a sentence of twenty (20) years in each count. Sentence to run concurrently.

Orders accordingly.

JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 25TH DAY OF FEBRUARY 2025

D. KAVEDZA

JUDGE

In the presence of:

Mr. Mutuma for the respondent

Appellant – present

Achode – court Assistant

