



REPUBLIC OF KENYA



**Kionza v Republic (Criminal Appeal E042 of 2024)
[2025] KEHC 3713 (KLR) (26 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 3713 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL E042 OF 2024
DR KAVEDZA, J
MARCH 26, 2025**

BETWEEN

KELVIN KIONZA APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal against the original conviction and sentence delivered
by Hon. S. Temu (SPM) on 13th June 2024 at Kibera Chief Magistrate's
Court Criminal Case no. E1511 of 2024 Republic vs Kelvin Kionza)*

JUDGMENT

1. The appellant was charged and after a full trial convicted for the offence of robbery with violence contrary to 296(2) of the *Penal Code*. The particulars were that on the 29th day of September, 2023 at Kawangware Madiaba Area in Dagoretti Sub-county within Nairobi County, the appellant jointly with another not before this court while armed with a panga robbed Charles Sirengo of his two mobile phones make ITEL valued at Kshs. 4,000 each and at the time of such violence used actual force. He was sentenced to twenty (20) years imprisonment.
2. Aggrieved, he filed the present appeal challenging the totality of his conviction and sentence. In his petition of appeal, he contended that he was not properly identified as the perpetrator of the offence and that his defence was erroneously disregarded.
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. PW1, Charles Sirengo, testified that on 29th September 2023, at 5:45 am, while heading to work, he encountered the appellant with an unknown man. The appellant, his neighbour, attacked him with



a panga, injuring his head, right index and middle fingers, and left wrist. The appellant stole his first phone and Kshs. 500, while the other man took his second phone.

5. Upon his cries of pain, PW2, Walter Kitui Wafula, and PW3, John Wamalwa, both neighbours, rushed to the scene and saw the appellant attacking PW1. They recognised him under a streetlight before the assailants fled. A week later, they recorded statements at Muthangari Police Station. In court, all three witnesses positively identified the appellant. Notably, when PW1 appeared in court, he walked with crutches, and the trial court observed that his injuries had not fully healed nearly a year after the incident treatment.
6. PW4, Abraham Kitui, the complainant's nephew, received a call about the incident, rushed to the scene, and took PW1 to Kenyatta National Hospital. PW5, Dr. Kamau Mariga, a police doctor, produced PW1's P3 form dated 29th September 2023. He confirmed that PW1 had suffered fractures in two fingers, a leg fracture, and tendon tears. The injuries were classified as grievous harm, caused by both sharp and blunt objects.
7. PW6, PC Michael Mwema, confirmed that the case was reported on the same day, leading to the appellant's arrest.
8. In his defence, the appellant claimed he was at work until noon when he was arrested and informed of the charges. He denied any involvement in the crime.
9. The appeal was canvassed by way of written submissions which have been duly considered and there is no need to rehash them.
10. 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”.
11. The evidence presented by the complainant, alongside PW2 and PW3, clearly establishes that the appellant inflicted injuries on the complainant using a panga. This court takes judicial notice that a panga is a dangerous or offensive weapon under the law. Thus, the first element of the offence is duly proven.
12. Moreover, the medical evidence provided by PW5, the police doctor, confirms the severity of the complainant's injuries. He suffered fractures in two fingers, a fracture in his left leg, and tendon tears. The trial court further noted that he required crutches for mobility, emphasizing the seriousness of his wounds. This evidence demonstrates that the appellant used significant violence against the complainant.
13. Additionally, the element of robbery is well established. The complainant testified that the appellant stole his first phone and Kshs. 500, while his accomplice took the second phone. This account remained consistent and was supported by PW2 and PW3, who witnessed the attack.
14. The identification of the appellant is also beyond dispute. The complainant, PW2, and PW3, who knew the appellant as their neighbour, positively identified him in court. Given their corroborated testimonies, mistaken identity is highly unlikely.
15. In light of the above analysis, the appellant's conviction was proper and is upheld.



16. The appellant was sentenced to twenty (20) years imprisonment. During sentencing, the court considered the pre-sentence report, and the aggravating circumstances and exercised discretion. Based on this premise, I see no reason to interfere with the sentence.

17. In the end, the appeal is found to be lacking in merit and is dismissed in its entirety.

Orders accordingly.

JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 26TH DAY OF MARCH 2025

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D. KAVEDZA

JUDGE

In the presence of:

Appellant Present

Ms. Njoroge for the State

Tonny Court Assistant

