



REPUBLIC OF KENYA



**Mbingu v Republic (Criminal Appeal E075 of 2024)
[2025] KEHC 3598 (KLR) (25 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 3598 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL E075 OF 2024
DR KAVEDZA, J
MARCH 25, 2025**

BETWEEN

JOHN MUISYO MBINGU APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal against the original conviction and sentence delivered on 9th May 2024 by Hon. I.M Kabuya (SPM) at Kibera Chief Magistrate's Court Criminal Case no. E2509 of 2021 Republic vs John Muisyo Mbingu)

JUDGMENT

1. The appellant was charged and after full trial convicted for the offence of stealing from a locked motor vehicle contrary to section 279(g) of the *Penal Code*. He was sentenced to serve seven (7) years imprisonment.
2. Aggrieved, he filed an 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 urged the court to quash his conviction and set aside the sentence imposed.
3. Before grappling with the grounds of appeal aforesaid, I am mindful that the first appellate court is under a duty to re-evaluate the evidence presented at trial and draw its own independent conclusions. Except, it must bear in mind that it neither saw nor heard the witnesses give their testimonies. Thus, matters of demeanour are best observed by the trial court. (See *Okeno v Republic* [1972] E.A 32.)
4. The prosecution case was as follows: Nelson Aderi (PW1) testified that on 14th November 2021, he withdrew Kshs. 809,000 from DTB Bank Prestige Plaza and placed it inside the co-driver's compartment of his vehicle, registration number KCR 031W. After meeting his brother for tea, he returned to find the driver's door damaged, the compartment open, and the money missing. CCTV footage revealed that individuals had trailed him and later fled in a getaway vehicle. He reported the



- matter to Kilimani Police Station, where he later identified the accused as the individual who broke into his vehicle, a fact the accused confessed to in custody. The footage further linked the get-away vehicle to the appellant's brother, Saulo Musyoki Mbingu (PW8).
5. Bernard Wandera Ouma (PW2), a security guard at Cake Plaza, confirmed PW1's arrival and recounted how a masked individual approached him twice, first asking for washrooms and later for jump starters. He then saw the individual join two others before heading to the parking lot. Moments later, PW1 accused him of standing by while his vehicle was broken into. PW2, unaware of the crime, advised PW1 to review the CCTV footage, which exposed how the offence was committed.
 6. Rebecca Kamau (PW3) and Levis Kiplagat (PW6) testified that they leased motor vehicle KCX 833X (the get-away vehicle) to PW8 for a month from 18th October 2021. PW8 complied with the agreement and returned the vehicle as scheduled. However, DCI Kilimani later informed them that the vehicle had been involved in a robbery on 4th November 2021 while still in PW8's custody.
 7. Sgt. Wambua (PW4), a scene of crime officer, documented the get-away vehicle at Kilimani Police Station on 12th February 2021, producing photographs and a certificate dated 26th October 2022 as exhibits.
 8. Forensic expert CIP Bett (PW5) testified that he received an exhibit memo dated 28th February 2021 from DCI Kilimani requesting analysis of CCTV footage extracted from Cake Plaza. The forensic report dated 11th November 2022 was produced as an exhibit, confirming that the appellant, wearing a brownish shirt, was seen driving the getaway vehicle.
 9. PW8 Saulo Musyoki Mbingu the appellant's brother admitted to hiring the get-away vehicle and lending it to the appellant on 2nd November 2021 for two days. He later returned the vehicle and was subsequently arrested when police linked it to the robbery. At the time, the appellant was on the run.
 10. Investigating Officer CPL Miheso (PW9) confirmed that PW1 reported the theft on 4th November 2021. CCTV footage identified the appellant breaking into PW1's vehicle, stealing the money, and fleeing in the get-away vehicle. Investigations confirmed that PW3 owned the vehicle, PW8 had hired it, and the appellant had used it at the time of the offence.
 11. Upon arrest, the appellant partially refunded PW1's losses before absconding bail. When placed on his defence, the appellant had absconded. The trial was thus concluded in his absence. He was convicted and sentenced accordingly.
 12. The appeal was canvassed by way of written submissions which have been duly considered and there is no need to rehash them. The issue for determination was whether the prosecution proved their case beyond reasonable doubt.
 13. Section 279 (g) of the [Penal Code](#) provides thus:
 - (g) if the offender, in order to commit the offence, opens any locked room, box, vehicle, or other receptacle, by means of a key or other instrument, the offender is liable to imprisonment for fourteen years.
 14. The prosecution led evidence to show that the appellant committed the offence of stealing from a locked motor vehicle contrary to Section 279(g) of the [Penal Code](#). PW1 testified that he withdrew Kshs. 809,000, placed it in his vehicle's co-driver compartment, and later found the driver's door damaged with the money missing. CCTV footage revealed that the appellant, along with accomplices, trailed PW1, broke into the vehicle, and stole the cash before fleeing in a getaway vehicle.



15. PW2, a security guard, confirmed suspicious movements by the appellant before the theft. Forensic analysis by PW5 identified the appellant as the individual who broke into the vehicle. PW9's investigation traced the get-away vehicle to PW8, who admitted lending it to the appellant. Further, the appellant partially refunded PW1's losses before absconding. The evidence was clear and credible, proving beyond reasonable doubt that the appellant stole from a locked motor vehicle. The conclusive forensic and documentary evidence proved beyond a reasonable doubt the appellant's involvement in the offence he was charged with. The appellant's conviction was proper and is affirmed.
16. The appellant was sentenced to serve seven (7) years imprisonment. The *Penal Code* provides for a maximum sentence of fourteen (14) years. During sentencing, the court considered the appellant's mitigation and exercised discretion in sentencing. The sentence imposed was lawful and I have no reason to interfere.
17. In the premises, the appeal is found to be lacking in merit and is dismissed in its entirety.
Orders accordingly.

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

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D. KAVEDZA

JUDGE

In the presence of:

Appellant Present

Mutuma for the Respondent

Tonny Court Assistant.

