



REPUBLIC OF KENYA



KENYA LAW
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**Njuguna v Republic (Criminal Appeal E024 of 2024)
[2025] KEHC 3586 (KLR) (Crim) (25 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 3586 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYANDARUA
CRIMINAL
CRIMINAL APPEAL E024 OF 2024
KW KIARIE, J
MARCH 25, 2025**

BETWEEN

STEPHEN NJOROGE NJUGUNA APPELLANT

AND

REPUBLIC RESPONDENT

(From the original conviction and sentence in Criminal Case No. E351 of 2023 of the Senior Principal Magistrate's Court at Engineer by Hon. E. Wanjala – Principal Magistrate)

JUDGMENT

1. Stephen Njoroge Njuguna, the appellant herein, was convicted of robbery with violence contrary to section 296 (1) as read with section 296(2) of the [Penal Code](#).
2. The particulars were that on the 22nd day of November 2022, at Magumu location in south Kinangop sub-county of Nyandarua County, jointly with another robbed Joseph Ndungu Gikonya, Kshs.95,000.00, a mobile phone valued at Kshs.3,000.00 and cash Kshs.1,000.00 all valued at Kshs.99,000.00 and immediately before the time of the said robbery, used actual violence to the said Joseph Ndungu Gikonya.
3. The appellant was convicted and sentenced to life imprisonment. He was aggrieved and filed this appeal in person. He raised the following grounds of appeal:
 - a. That the learned trial magistrate erred in law and facts by convicting the appellant with inconsistent evidence, theorizing conspiracy and fabrication against the appellant.
 - b. That the learned trial magistrate erred in law and facts by convicting the appellant, and yet identification was not proved.



- c. That the learned trial magistrate erred in law by convicting the appellant, and yet the parade was not conducted as required by the law.
 - d. That the learned magistrate erred in law and fact by convicting the appellant yet failed to consider that the sentence was excessive and harsh in relation to the weight of the cases.
4. The state opposed the appeal.
 5. As a first appellate court, I have thoroughly analyzed and evaluated all the evidence presented in the lower court. It is important to note that I did not see or hear any witnesses. In my evaluation, I will be guided by the influential case of *Okeno vs Republic* [1972] EA 32.
 6. An identification parade assesses a witness's ability and accuracy in identifying the person they claim to have seen and believe they can recognize later. The parade is thus arranged based on the description provided by the witness. In the instant case, conducting an identification parade was unnecessary. In *Kinyanjui & 2 Others v Republic* [1989] KEHC 73 (KLR), it was stated:

The purpose of an identification parade is to give an opportunity to a witness under controlled and fair conditions to pick out the people he is able to identify, and for a proper record to be made of that event to remove possible later confusion.

In this case, the complainant's evidence was that he did not identify his attackers. Therefore, an identification parade was not necessary.
 7. Amongst the items the complainant was robbed of was his Equitel line. The complainant argued that the robbers made several withdrawals minutes after the robbery. The robbery was on the 22nd day of November 2022 at about 10.30 p.m. According to the evidence of Corporal Jonathan Limo (PW4), the appellant was the owner of telephone number 0746699238.
 8. Joseph Ndungu Gachuhi (PW3) provided a breakdown of the payments made from the complainant's Equitel account to the appellant's M-Pesa account as follows:
 - a. On 22nd November 2022 at 23:56:17 Kshs. 20000.00; and
 - b. On 23rd November 2022 at 00:07:32 Kshs. 3000.00.
 9. The appellant argued that the complainant paid him for the supply of DAP fertilizer. This defence appeared to be an afterthought. The complainant was not challenged with this evidence during cross-examination. The learned trial magistrate was justified in dismissing it.
 10. The M-Pesa transaction was made shortly after the robbery. The appellant must have been among the robbers.
 11. The appellant contended that the sentence was harsh. An appellate court would interfere with the trial court's sentence only where there exists, to a sufficient extent, circumstances entitling it to vary the trial court's order. These circumstances were well illustrated in the case of *Nillson vs Republic* [1970] E.A. 599, as follows:

The principles upon which an appellate court will act, in exercising its jurisdiction to review sentences are fairly established. The court does not alter a sentence on the mere ground that if the members of the court had been trying the appellant, they might have passed a somewhat different sentence, and it will not ordinarily interfere with the discretion exercised by a trial Judge unless as was said in *James Vs. REX* (1950), 18 EACA 147, it is evident that the Judge has acted upon some wrong principle or overlooked some material factor. To this,



we would also add a third criterion, namely, that the sentence is manifestly excessive in view of the circumstances of the case. R Vs. Shershewcity (1912) C.CA 28 T.LR 364.

12. Section 296 (2) of the *Penal Code* provides:

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.

13. The ingredients of section 296 (2) were established. Therefore, the appropriate sentence should have been the death penalty. The ODPP did not serve the appellant with a Notice for enhancement. Consequently, I cannot impose the prescribed sentence, as it would be prejudicial. The life sentence, on the other hand, has been declared unconstitutional. I, therefore, set the sentence aside, substituting it with a sentence of twenty-five years' imprisonment.

14. The appeal is only successful to that extent.

DELIVERED AND SIGNED AT NYANDARUA THIS 25TH DAY OF MARCH 2025

KIARIE WAWERU KIARIE

JUDGE

