



**Chris v Republic (Criminal Appeal E114 of 2024)  
[2025] KEHC 4953 (KLR) (28 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 4953 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
CRIMINAL APPEAL E114 OF 2024  
DR KAVEDZA, J  
APRIL 28, 2025**

**BETWEEN**

**BRIAN CHRIS ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal against the original conviction and sentence delivered by  
Hon. Z. Abdul (PM) on 5th September 2024 at Kibera Chief Magistrate's  
Court Criminal Case no. E155 of 2023 Republic vs Brian Chris)*

**JUDGMENT**

1. The appellant was charged with two counts. In count I, he was convicted of robbery with violence contrary to section 296(2) of the Penal Code and sentenced to thirty-five years' imprisonment. In count II, he was convicted of being in possession of a firearm contrary to section 4A(1)(a)(2)(d) as read with section 34(1) of the Firearms Act and sentenced to seven years' imprisonment, the sentences to run concurrently.
2. Aggrieved, he filed this appeal challenging both conviction and sentence. In his petition received on 9th October 2024, he raised five grounds, broadly arguing that the prosecution's evidence was insufficient, his defence under Article 50 of the Constitution was not properly considered, and that key witnesses and exhibits were not produced. He urged the court to quash the conviction and set aside the sentence.
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 prosecution called five (5) witnesses in support of their case. PW1, Ruth Kaswii, testified that on 22/1/23 at about 9 pm while walking home along Jamhuri Railway Road, she was confronted by three



men on a motorcycle. One of them, armed with a pistol, ordered her to hand over her possessions. They stole her handbag and sling bag containing personal documents, an iPhone, earphones, perfumes, and Kshs 2,300/-. She identified the armed assailant, later the appellant, under good lighting. She reported to Jamhuri Police Station and subsequently identified her recovered bag and the appellant in an ID parade.

5. PW2, CPL Bosco Mutua, testified that the appellant was brought to the station by members of the public, who also recovered a toy pistol and a black bag containing PW1's documents. PW2 confirmed PW1's report but noted that the stolen phone and money were not recovered.
6. PW3, PC Caroline Olunga, recorded PW1's statement, confirmed the ID parade process, and stated that the appellant was found with the complainant's bag. She noted that no other suspects were apprehended.
7. PW4, Chief Inspector Paul Wanyoike, a ballistic expert, examined the recovered weapon. He opined it was a colt-made assorted pistol, designed to fire BBs, classified as a firearm under the *Firearms Act*, despite a broken receiver and absence of ammunition.
8. PW5, C.I. Kimutai, conducted the ID parade, confirming that PW1 positively identified the appellant without prior interaction.
9. In his sworn defence, DW1, Brian Chris, denied the charges, claiming wrongful arrest by police while returning from a club, disputing the circumstances of recovery, and alleging police malice.
10. The appeal was canvassed by way of written submission which have been duly considered and there is no need to rehash them.
11. In respect of Count I, the charge of robbery with violence under Section 296(2) of the *Penal Code* was supported by clear and consistent evidence. PW1, the complainant, testified that she was attacked by three men on a motorcycle. One of the men, whom she later identified as the appellant, was armed with a pistol and threatened her before forcibly taking her handbag and sling bag containing personal effects, an iPhone, earphones, perfumes, and Kshs. 2,300. The incident occurred in a well-lit area, enabling PW1 to clearly see and later recognise the appellant.
12. PW2 confirmed that members of the public apprehended the appellant shortly after the incident and recovered a black bag containing PW1's identification documents, along with a pistol-like object. PW3 testified that an identification parade was conducted properly and that PW1 positively identified the appellant as the assailant who threatened her. PW5, who conducted the parade, confirmed that there was no prior interaction between PW1 and the appellant before the parade.
13. PW4, the ballistic expert, classified the recovered pistol-like object as a firearm under the *Firearms Act*, despite it being inoperative due to a broken receiver. The object was capable of causing fear, thereby satisfying the "dangerous weapon" element required under Section 296(2). The recovery of the complainant's belongings directly from the appellant, combined with her positive identification, placed him squarely at the scene and in active participation in the robbery.
14. As regards Count II, the charge of being in possession of a firearm contrary to Section 34(1) of the *Firearms Act*, the evidence was equally clear. PW4 confirmed that the object recovered from the appellant was a Colt-made air pistol, designed to fire projectiles and thus falling within the statutory definition of a firearm. Although the pistol was broken and lacked ammunition, it was still capable of instilling fear in an unsuspecting victim.



15. The appellant did not present any evidence of being licensed to possess a firearm. Moreover, his use of the pistol-like object during the robbery demonstrated the intent to commit a criminal offence, thereby fulfilling the elements of the offence under Section 34(1).
16. In light of the credible and corroborated evidence, it is clear that both offences were proved beyond reasonable doubt. The conviction of the appellant on both counts was therefore proper and justified.
17. On sentence, the appellant was sentenced to thirty-five years' imprisonment on Count I and seven years on Count II, to run concurrently. Under Section 329 of the *Criminal Procedure Code*, the court has the discretion to consider mitigation and impose a sentence that fits the circumstances, even where a specific sentence is prescribed. In this case, the sentence imposed was excessive and extinguished the appellant's prospects for rehabilitation.
18. Accordingly, the appeal on the sentence succeeds. The sentence of thirty-five years imposed by the trial court is substituted with a sentence of twenty (20) years' imprisonment. The sentence of seven (7) years on Count II is maintained. Both sentences shall run concurrently from 23rd January 2023, in accordance with Section 333(2) of the *Criminal Procedure Code*, taking into account the period spent in remand custody.

Orders accordingly.

**Judgement dated and delivered virtually this 28th day of April 2025**

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**D. KAVEDZA**

**JUDGE**

In the presence of:

Appellant Absent

Mr. Chebii for the Respondent

Tonny Court Assistant.

