



REPUBLIC OF KENYA



KENYA LAW
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**Mwaura v Republic (Criminal Appeal E067 of 2024)
[2025] KEHC 4945 (KLR) (28 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 4945 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL E067 OF 2024
DR KAVEDZA, J
APRIL 28, 2025**

BETWEEN

JOEL MWANGI MWAURA APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal against the original conviction and sentence delivered by Hon. E. Juma (S.P.M) on 28th February 2018 at Kibera Chief Magistrate’s Court Criminal Case no. 4347 of 2016 Republic v Joel Mwangi Mwaura and 2 others)

JUDGMENT

1. The appellant jointly with others not before this court 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 thirty (30) years imprisonment. 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 maintained that the evidence adduced was not enough to base his conviction. He urged the court to quash his conviction and set aside the sentence imposed.
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. PW2, Faith Makena, recounted that at around 7:00 p.m. on 18th November 2016, while walking along Kipande Road en route to work, she was attacked. An assailant snatched her handbag and fled. She observed the suspect carrying a green paper bag and a gunny sack. Attempts to raise the alarm were met with physical assault. She was robbed of Kshs. 15,000, an Itel mobile phone, a Safaricom SIM card, three ATM cards (KCB, Equity, and Co-operative Bank), and personal documents including NHIF and NSSF cards. Some items were later recovered. She valued the total loss at Kshs. 30,000.
7. PW2 subsequently identified both Josiah Aligula and the appellant in an identification parade, noting distinctive features such as facial markings and attire. She confirmed that Aligula had snatched her purse.
8. PW1, Owen Wafula, a security officer at the Museum of Kenya, testified that on 18th November 2016 at approximately 6:54 a.m., upon reporting to duty, he was informed by his former supervisor, Kioko, that a colleague, Faith Makena (PW2), had been attacked and robbed. Alongside fellow security personnel, PW1 proceeded to patrol the Michuki Forest adjacent to the museum, where they discovered two men lying down. These individuals were apprehended and escorted to Parklands Police Station. Later, they were informed that further suspects had been arrested, and the complainant was invited to identify them. PW1 noted that the complainant positively identified Josiah Aligula and the appellant, Joel Mwangi Mwaura.
9. Upon cross-examination by the appellant, PW1 stated that the appellant was found asleep at a location within the forest commonly associated with criminal activities.
10. PW3, CPL Victoria Nyambura, the investigating officer, testified that the appellant was arrested carrying a sack and was identified as the individual who had grabbed the complainant's handbag and fled into the forest. Upon cross-examination, she affirmed that the complainant's belongings were recovered at the location of the appellant's arrest.
11. PW4, PC James Obiri, the arresting officer, confirmed he took custody of the suspects from museum officials and transported them to the station. He corroborated the recovery of stolen items, including the complainant's NHIF and insurance cards, at the appellant's arrest site.
12. DW1, Josiah Aligula, testified that he worked as a water vendor. Upon learning that his friend had been arrested, he went to the museum to find and possibly bail him out. While there, police officers arrested him and took him to Pangani Police Station. He denied any involvement in the robbery, claiming that the exhibits were recovered from Michuki Park after he was already in custody. He asserted that the complainant had mistakenly identified him.
13. DW2, Isaac Wafula, a park cleaner, stated he was arrested by museum guards on suspicion of robbery. He maintained that he was not at the scene and did not commit the offence, noting that the complainant had confirmed in her testimony that he was not among the assailants.



14. DW3, the appellant Joel Mwangi, also a water vendor at the park, testified that he was asleep when the police woke him and arrested him. He denied all allegations and stated that he was later charged with an offence of which he did not know.
15. 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)
16. The issue for determination is whether the appellant was positively identified and if the prosecution has proven its case beyond reasonable doubt.
17. The evidence on record clearly establishes that PW2 was violently attacked and robbed by the appellant, Joel Mwangi, in the company of other assailants. During the incident, PW2 was slapped and dispossessed of Kshs. 15,000/-, an Itel mobile phone, a Safaricom SIM card, three ATM cards (KCB, Equity, and Co-operative Bank), and personal documents including NHIF and NSSF cards, some of which were later recovered.
18. PW2 gave a detailed account of the attack and positively identified the appellant, noting distinctive facial features and clothing, including a visible mark on his face. Her identification remained consistent and unshaken, even under cross-examination, and was reaffirmed during re-examination. Her testimony was found to be credible, clear, and reliable.
19. PW3, the investigating officer, confirmed that the appellant was arrested in possession of a sack containing some of the complainant's personal effects. This was corroborated by PW4, the arresting officer, who testified that the complainant's NHIF and insurance cards were recovered at the appellant's arrest site.
20. The prosecution also established that force was used in the course of the robbery, as evidenced by the physical assault inflicted on PW2. Consequently, the use of violence was proved.
21. The trial court duly considered the appellant's defence in its entirety. However, upon careful evaluation, the court found that the defence did not cast any reasonable doubt on the prosecution's case. The prosecution presented clear, consistent, and credible evidence, particularly through the testimony of PW2, who positively identified the appellant as one of the assailants. This identification was corroborated by the recovery of some of the stolen items at the place of the appellant's arrest. Furthermore, it was established that violence was employed during the commission of the offence. Accordingly, the court was satisfied that the appellant, jointly with others, committed the offence of robbery with violence. The charge was therefore proved beyond reasonable doubt. The appellant's conviction is affirmed.
22. The appellant was sentenced to thirty (30) years imprisonment. Section 329 of the *Criminal Procedure Code*, gives judges and magistrates, in appropriate cases to consider mitigation and mete out a sentence that fits the offence committed despite another sentence being provided for under the Act in which the offence is prescribed. In that regard, I find the sentence imposed shatters all hopes of the appellant for rehabilitation or having another chance to start afresh.
23. Therefore, the appeal on the sentence succeeds. The sentence of thirty years imprisonment is substituted with a sentence of twenty (20) years imprisonment. The sentence shall run from 18th November 2016 pursuant to section 333(2) of the *Criminal Procedure Code*, Cap 75 Laws of Kenya.



Orders accordingly.

JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 28TH DAY OF APRIL 2025

D. KAVEDZA

JUDGE

In the presence of:-

Appellant Present

Mr. Chebii for the Respondent

Tonny Court Assistant

