



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Nagene v Republic (Criminal Appeal E076 of 2024)
[2025] KEHC 4943 (KLR) (28 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 4943 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL E076 OF 2024
DR KAVEDZA, J
APRIL 28, 2025**

BETWEEN

JARED NAGENE APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal against the original conviction and sentence delivered
on 21st September 2023 by Hon. Kabuya I.M (SPM) at Kibera Chief
Magistrate's Court Criminal Case no. E1653 of 2022 Republic v Jared Nagene)*

JUDGMENT

1. The appellant was charged and after a full trial convicted of the offence of robbery with violence contrary to section 296(2) of the *Penal Code*. The particulars are that on 17th September 2022 at Silanga area in Lang'ata sub-county within Nairobi County, jointly with others not before court being armed with dangerous weapons namely knives and metal bars, robbed Sammy Kamau Ndung'u cash Kshs. 12,600, a black jacket valued at Kshs. 300, a black cap valued at Kshs. 500 and at the time of the robbery used actual violence. He was sentenced to serve thirty (35) years imprisonment.
2. Aggrieved, he filed the present appeal challenging his conviction and sentence. He contended 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. The prosecution called five (5) witnesses in support of their case. PW1, Sammy Kamau Ndungu, testified that on the material day while heading home from work, he encountered three men. The appellant who was among them, demanded his belongings, and upon refusal, the appellant stabbed



him. The assailants then fled with PW1's items. PW1 raised an alarm and was assisted by PW2, who transported him to Mbagathi Hospital and later to Kenyatta National Hospital, where he was admitted for four days. PW1 later participated in an identification parade and identified the appellant, both during the parade and in court.

5. PW2, Collins Malusa, confirmed seeing the appellant with a black jacket and identified him in court. PW3, Inspector Daniel Opiyo, conducted the identification parade where the complainant identified the appellant by touch. PW4, Corporal Patrick Mwangi, the investigating officer, issued a P3 form to PW1 and recorded the statements of both PW1 and PW2. PW5, Dr. Kamau Mariga, presented a P3 form, confirming that the complainant sustained a penetrative abdominal injury with his intestines spilling out.
6. At the close of the prosecution's case, the court found that a prima facie case had been established. In his defence, the appellant, DW1, denied committing the offence, asserting that he was at home with his wife, DW2, when he was arrested by police officers. He contended that he was mistakenly identified, a claim supported by DW4, Carolyne Namai, his mother.
7. The appeal was canvassed by way of written submissions which have been considered.
8. 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”.

9. The offence of robbery with violence under section 296(2) of the [Penal Code](#) requires the presence of several key elements. First, the complainant testified that during the robbery, the appellant, along with two other assailants, stabbed him. This was corroborated by PW2, who saw the complainant bleeding profusely and rushed him to the hospital. PW5, the police surgeon, confirmed that the complainant suffered a severe abdominal injury, with his intestines exposed, clearly establishing the use of violence.
10. Second, the appellant was armed with a weapon, as evidenced by the stabbing incident, fulfilling the requirement of being armed with an offensive weapon.
11. Third, the robbery involved more than one assailant, as testified by the complainant and confirmed by the circumstances of the attack. The complainant was able to identify the appellant during an identification parade, and PW2, who was familiar with the appellant, also identified him in court.
12. The prosecution's evidence satisfies all the elements of robbery with violence, including the use of force, being armed, and the involvement of multiple assailants. As such, the appellant's conviction is upheld.
13. The appellant was sentenced to serve thirty-five (35) years imprisonment. During sentencing, the court considered the pre-sentence report, and the aggravating circumstances surrounding this case and exercised discretion. Based on this premise, I see no reason to interfere with the sentence.
14. 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 28TH DAY OF APRIL 2025



D. KAVEDZA

JUDGE

In the presence of:

Appellant Present

Mr. Chebii for the Respondent

Tonny Court Assistant

