



REPUBLIC OF KENYA



**KENYA LAW**  
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**Ogoti & 4 others v Republic (Criminal Appeal E041 of 2024)  
[2025] KEHC 4939 (KLR) (28 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 4939 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
CRIMINAL APPEAL E041 OF 2024**

**DR KAVEDZA, J**

**APRIL 28, 2025**

**BETWEEN**

**ALFRED RATEMO OGOTI ..... 1<sup>ST</sup> APPELLANT**  
**JOACHIM OMBUI ABUGA ..... 2<sup>ND</sup> APPELLANT**  
**OLIVIA JUMBA BOGE ..... 3<sup>RD</sup> APPELLANT**  
**MAUREEN ATIENO OTIENO ..... 4<sup>TH</sup> APPELLANT**  
**JUDITH KERUBO OMWAMBA ..... 5<sup>TH</sup> APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal against the original conviction and sentence delivered by  
Hon. A. Mwangi (C.M) on 3rd June 2024 at Kibera Chief Magistrate's Court  
Criminal Case no. 310 of 2018 Republic vs Alfred Ratemo Ogoti and 5 others)*

**JUDGMENT**

1. The appellants were jointly charged with another not before this court for the offence of trafficking in persons contrary to section 3 (1) (b) as read with section 3(5) of Counter Trafficking in Persons [Act No. 8 of 2010](#), in that on the 20th day of February 2018 between 1530 hrs and 2030 hrs in Lang'ata Sub County within Nairobi County, they abducted one Ian Ochieng Otieno from Kumwenga Slum in Karen to Bomas of Kenya then to Ngong Town and back to Bomas of Kenya in Nairobi. They pleaded not guilty and after a full trial, they were convicted. They were each sentenced to serve one-year imprisonment in addition to pay a fine of Kshs. 500,000.
2. Aggrieved, they file an appeal challenging their conviction and sentence. In their petition of appeal, they challenged the totality of the prosecution's evidence against which they were convicted. They urged the court to quash their conviction and set aside the sentence imposed.



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's case was that PW1, Mr. Wycliffe Ouma Ochieng, employed as a secretary at Judith Achieng Sijeni Advocates, was on his way home to Kasarani from Karen at approximately 1700 hours on 20 February 2018 when he received a call from an unknown female. The caller requested that he speak to his brother, Ian Otieno Ochieng. Upon taking the call, Ian informed PW1 that he had been kidnapped by unknown persons who demanded PW1's immediate presence, failing which he would not be released. The caller alleged they were at Karen Police Station and demanded Kshs. 5 million in cash. PW1 assured the caller he would attend.
5. PW1 reported the matter at Central Police Station but was referred to Lang'ata Police Station. En route, he received another call from a male voice threatening that Ian would be killed if PW1 did not reach Bomas of Kenya within 30 minutes. At Lang'ata Police Station, PW1 reported to the Deputy OCS who instructed him to call the suspects on loudspeaker. PW1 complied and was directed to the Bomas of Kenya parking lot. Acting on instructions, he was transported there by a motorcyclist, confirmed the suspects' presence, and returned to Lang'ata. He was assigned an officer and returned to Bomas, where he observed a Toyota Alphard, registration KCH 946K, with several individuals nearby.
6. PW1 identified the appellants as the suspects. Upon confirming his identity to the 1st appellant, the latter enquired whether he had brought "the things." The accompanying officer ordered the suspects to lie down. Upon searching the vehicle, Ian Otieno was found handcuffed, bleeding from his nose and ears, but alive.
7. Further search revealed a Kenya Army jacket and trousers. Maureen Atieno Otieno (4th appellant) identified herself as a Department of Defence officer, and Olivia Jumba Boge (3rd appellant) as a police officer. Following gunshots fired by police, the suspects were arrested and taken to Lang'ata Police Station, where PW1 recorded his statement.
8. PW1 provided two phone numbers used by the suspects and handed over his phone. He testified he had no prior acquaintance with the 1st appellant, had never handled Kshs. 5 million, and had earlier visited his brother that day. Under cross-examination, he confirmed he received the first call at 5 p.m., reported at Central by 6 p.m., and was referred to Lang'ata by 7:30 p.m. He stated the Deputy OCS had tracked the suspects to Bomas.
9. PW1 stated that although his recorded statement mentioned Ian being removed from the vehicle, it did not specify he was found in the boot. He confirmed neither he nor his brother could raise Kshs. 5 million and denied any dealings with the appellants. He transported Ian to the hospital by motorbike and identified the handcuffs found.
10. PW2, Ian Otieno Ochieng, testified that around 9:30 p.m. on 20 February 2018, while at home in Lang'ata, four unknown men, one claiming to be a police officer, entered and sought PW1. Ian identified this man as Job Anyona Moracha. Ian was handcuffed, assaulted, and robbed of Kshs. 6,600, and placed in a vehicle boot with restricted visibility due to tinted windows. Ian was assaulted during transit and threatened with death unless he facilitated contact with PW1. The vehicle stopped briefly at Karen Police Station before moving again. Ian testified that the 4<sup>th</sup> appellant called his father and then PW1, demanding his presence.
11. At Bomas, after waiting for 90 minutes, gunshots were fired upon PW1's approach. Ian attempted to flee but was apprehended. He confirmed he remained handcuffed throughout.



12. On 21 February 2018, Ian attended an identification parade where he positively identified Job Anyona Moracha. He also identified the vehicle, handcuffs, and Anyona's certificate of appointment. He sustained injuries and was issued a P3 form.
13. During cross-examination, Ian denied knowing why he and his brother were targeted. On re-examination, he confirmed his village chairman contacted Central Police Station, where it was confirmed that Accused 2 was not attached there.
14. PW3, a police officer from Lang'ata Police Station, testified that on 20 February 2018 at about 8 p.m., he was directed to attend to a kidnapping complaint by PW1. Using phone tracking, the suspects were located at Bomas. PW3 accompanied PW1 to Bomas, observed the suspects near a parked vehicle, and ordered them to surrender.
15. PW3 confirmed that the victim was located inside the vehicle. Reinforcements arrived, the suspects were arrested, and a military uniform and identification documents were recovered.
16. PW4, the Deputy OCS Lang'ata, testified that upon receiving the report, he conversed with the female suspect and tracked her to Bomas with the help of DCI officers. He ordered the suspects' surrender and noted that Ian appeared injured. PW4 confirmed that No. 94129 Oliver Jumba Boge (a police officer), No. 50533 Sgt. Maureen Otieno (a KDF officer), and three others were arrested, with handcuffs and military attire recovered.
17. In their respective defences, the 1st appellant testified that on 20 February 2018, he was at Kencom, Nairobi, when Judith Kerubo the 5<sup>th</sup> appellant requested his assistance as her car had broken down at Mikinduri. He, along with appellants 2, 3, and later Accused 2, boarded an Uber to the location. After assisting, Judith paid the taxi driver and offered her car for transport. They dropped Accused 2 at Ngong Police Station before returning to Bomas to await further instructions. The 1st appellant stated he was unaware of any criminal activity and denied robbing or demanding Kshs. 5 million. He admitted knowing Judith since 2014 but was unaware of her business dealings.
18. The 2nd accused, Job Anyona, testified he was asked to meet colleagues and assist with a breakdown. After helping, he requested a lift to Ngong Road and subsequently learned of robbery allegations when summoned to Lang'ata Police Station. He denied wrongdoing and disputed the fairness of the identification parade.
19. The 2nd appellant, Joachim Ombui Abuga, testified he met the 1st appellant, who sought assistance with the stalled vehicle. After jump-starting the car, they transported Accused 2 to Ngong, then proceeded to Bomas. Shots were fired upon PW1's arrival, and they were arrested. He denied any involvement in theft or extortion.
20. The 3rd appellant, a police officer, stated he accompanied friends to assist with the vehicle. After dropping Accused 2, they returned to Bomas, where police opened fire and demanded surrender. No money or weapons were found.
21. The 4th appellant, a Senior Sergeant with the Armed Forces, testified she met Wycliffe at the DOD regarding a padlock sale. After Judith's car broke down, they received help. Later at Bomas, Wycliffe arrived on a motorbike but avoided contact. Shots were fired and they were arrested. She asserted they were merely trying to assist friends.
22. The 5th appellant testified that her car had a mechanical problem and that she contacted the 1st appellant for help. After the car was jump-started, they dropped Accused 2 at Ngong Police Station and then went to Bomas. There, Wycliffe arrived, an argument ensued, and the police arrested them



after firing shots. She denied any criminal conduct, asserting her role was merely transportation. She stated that no weapon was recovered from her and despite injuries sustained during arrest, no medical attention was provided.

23. The 2<sup>nd</sup> accused was acquitted while the others were convicted and sentenced accordingly.
24. In their appeal, they challenged the totality of the prosecution's evidence against which they were convicted. The issue is whether the prosecution proved their case beyond reasonable doubt and whether the sentence was proper.
25. The appellants are charged with trafficking in persons contrary to section 3(1)(b) as read with section 3(5) of the *Counter-Trafficking in Persons Act* No. 8 of 2010.

Section 3(1)(b) states:

"A person commits the offence of trafficking in persons when they recruit, transport, transfer, harbour or receive another person by means of threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or of position of vulnerability for the purpose of exploitation."

26. The first ingredient is recruitment, transportation, transfer, harbouring, or receipt of a person. The evidence shows that PW2, Ian Otieno Ochieng, was abducted from his home by the 2<sup>nd</sup> appellant and others, handcuffed, and placed in the boot of a vehicle with restricted visibility. He was transported against his will to various locations including Karen Police Station and ultimately Bomas of Kenya. The victim remained under the control of the appellants until his rescue by police. This establishes the element of harbouring, transporting, and receiving.
27. The second ingredient is the means used: coercion, abduction, or abuse of power. PW2 testified that he was forcibly taken, handcuffed, and continuously assaulted while being transported. PW1, his brother, received multiple threatening calls demanding ransom, with threats of death if he failed to comply. Moreover, some appellants wore police and military uniforms, falsely presenting themselves as law enforcement officers. This constituted coercion, abduction, and abuse of power within the meaning of the law.
28. The third ingredient is the purpose referring to exploitation. The demand for Kshs. 5 million, accompanied by threats to the victim's life, clearly demonstrates the appellants' intent to exploit the victim and his family financially. The assault, unlawful detention, and impersonation were all geared towards securing unlawful financial gain. The exploitation, therefore, was fully established.
29. The appellants' defences, that they were assisting with a broken-down vehicle were inconsistent, self-serving, and could not withstand the clear, consistent evidence of abduction, detention, and ransom demands. No explanation was given for the presence of the injured victim in the vehicle, the impersonation of security personnel, or the use of handcuffs.
30. In view of the foregoing, I find that the prosecution proved all the ingredients of the offence beyond reasonable doubt. In the premises, the appellants' conviction was proper and is sustained.
31. Upon conviction, the appellants were each sentenced to serve one-year imprisonment in addition to payment of a fine of Kshs. 500,000. During the sentencing, the trial court considered their mitigation, being first offenders, and the pre-sentence reports. The sentence imposed was lawful and there is no reason to interfere.
32. I however note that the trial court erroneously failed to impose a default sentence in the event the appellants fail and/or are unable to pay the fine imposed. In the premises, the appellants are each



sentenced to serve one (1) year imprisonment in addition to pay a fine of Kshs. 500,000 in default to serve an additional one (1) year imprisonment. The default sentence shall run consecutively.

Orders accordingly.

**JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 28<sup>TH</sup> DAY OF APRIL 2025**

**D. KAVEDZA**

**JUDGE**

In the presence of:

Appellants absent

Mr. Chebii for the Respondent

Tonny Court Assistant

