



REPUBLIC OF KENYA



KENYA LAW
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**Salim & 2 others v Republic (Criminal Appeal E120 of 2024)
[2025] KEHC 4937 (KLR) (28 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 4937 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL E120 OF 2024
DR KAVEDZA, J
APRIL 28, 2025**

BETWEEN

OMAR MUSTAFA SALIM 1ST APPELLANT

MARJAN BURHAN 2ND APPELLANT

YASIN DONKA 3RD APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal against the original conviction and sentence delivered on
3rd October 2024 by Hon. Z. Abdul (PM) at Kibera Chief Magistrate's Court
Criminal Case no. E318 of 2024 Republic v Omar Mustafa Salim and 2 others)*

JUDGMENT

1. The appellants were jointly charged and after a full trial convicted for the offence of robbery with violence contrary to section 296(2) of the *Penal Code*. The particulars are that on 14th January 2024 at the Kichinjio area in Kibra sub-county within Nairobi county, the appellants jointly with others not before court robbed Collins Makana of cash Kshs. 4,900, his national ID card, Cooperative Bank ATM card, 65 pieces of bread valued at Kshs. 11,777, 4 empty crates of bread, and immediately at the time of such robbery used actual violence to the said complainant. They were each sentenced to thirty (30) years imprisonment.
2. Aggrieved, they filed the present appeal challenging their conviction and sentence. In their appeal, they challenged the totality of the prosecution's evidence against which they were convicted. Further, the sentence imposed was harsh and excessive. 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 called six (6) witnesses in support of their case. PW1, Collins Makana, testified that on the material day at 5:45 am while transporting four crates of bread by hand, he was accosted by eight men near Eagles Hospital. He saw their faces due to the presence of security lights. The first appellant choked him, threw him to the ground, and kicked him in the stomach. The second appellant stabbed his left hand as he shielded his forehead, and he was struck by a stone, causing him to fall unconscious. He later regained consciousness at the hospital. The attackers stole his ID, Cooperative Bank card, Kshs 4900, a Vito phone, and 65 pieces of bread.
5. PW2, Muhammed Hassan Golo, heard the screams, rushed to the scene, and called the DC office. The attackers fled, but the appellants were arrested by the public and brought to the police station. PW3, Dr. Kamau Mariga, provided a P3 form detailing the complainant's injuries, which included swelling and lacerations from both blunt and sharp objects.
6. PW4, Corporal Oreu Ngelechei, corroborated the complainant's testimony.
7. At the close of the prosecution's case, the court found a prima facie case. The second appellant, DW1, claimed he was ferrying water when arrested by the public. The third appellant, DW2, stated he was initially arrested for assault and later charged with robbery. The first appellant, DW3, alleged a personal grudge between the complainant and his mother led to the charge.
8. The appeal was canvassed by way of written submissions which have been duly considered. The issue for consideration is whether the prosecution proved their case beyond reasonable doubt and whether the appellants' conviction was proper.
9. 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”.
10. It was the prosecution's evidence led by the complainant who testified that the appellants, while armed with a knife and a stone, assaulted him during the robbery. He was stabbed in the hand, shielding his forehead, and struck on his side with a stone. PW2 and PW3 corroborated this evidence: PW2 rushed the complainant to the hospital immediately after the attack, while PW3, the police doctor, confirmed that the complainant had sustained serious injuries from both blunt and sharp objects. The use of a knife and stone sufficiently establishes the presence of offensive weapons and the infliction of actual violence.
11. Further, the complainant was able to positively identify the appellants, as the scene was well-lit. His evidence was corroborated by PW4, the investigating officer.
12. Accordingly, the elements of robbery with violence: being armed with offensive weapons, being in the company of more than one assailant, and using actual violence, were duly established. Upon review of the evidence, the court is satisfied that the prosecution proved the offence of robbery with violence contrary to section 296(2) of the [Penal Code](#).



13. The appellants were each 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.
14. Therefore, the appeal on the sentence succeeds. The sentence of thirty years imprisonment is substituted with a sentence of twenty (20) years imprisonment for each appellant. The sentences shall run from 9th February 2024 pursuant to section 333(2) of the *Criminal Procedure Code*, Cap 75 Laws of Kenya having spent the entirety of the trial in remand custody.

Orders accordingly.

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

D. KAVEDZA

JUDGE

In the presence of:

Appellants Present

Mr. Chebii for the Respondent

Tonny Court Assistant

