



**Otieno v Republic (Criminal Appeal E099 of 2024)
[2025] KEHC 7373 (KLR) (27 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 7373 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL E099 OF 2024
DR KAVEDZA, J
MAY 27, 2025**

BETWEEN

EGANS OTIENO APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal against the original conviction and sentence delivered by
Hon. M. Murage (PM) on 1st October 2024 at Kibera Chief Magistrate's
Court Criminal No. 506 & 598 of 2015 Republic vs Egans Otieno)*

JUDGMENT

1. The appellant was jointly charged with others not before this court with V counts of robbery with violence contrary to section 296() of the penal code. After a full trial, the appellant was convicted on one count of robbery with violence, and the co-accused persons were acquitted on all counts. The appellant was sentenced to serve thirty (30) years imprisonment.
2. Aggrieved, the appellant filed the present appeal challenging his conviction and sentence. In the petition of appeal, the appellant challenged the totality of the prosecution's evidence against which he was convicted. He complained that the sentence imposed was harsh and excessive. He urged the court to quash his 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 appellant was charged with robbery with violence following an incident at Tell-a-Tell Productions in Ongata Rongai on 4th February 2015. PW1, Paul Fredrick Omondi Owino, the studio director, testified that he arrived around 1:30 a.m. and was let in by John Katana Kasuku (PW4). They were



- confronted by two armed men. PW1 fled into the house, but the attackers followed and robbed him of cash, a Huawei phone, a TV, and other items. He later recovered the phone.
5. PW2, Sudi Mairura Mauti, a studio employee, said PW1 arrived warning of robbers. One of them, who he identified as the appellant, ordered them to the ground and used a phone to call the police. PW2 was robbed of Kshs 400, shoes, and a phone. He identified the appellant at a police line-up and recognised some of the recovered items. PW3, Douglas Omeno Ogega, also at the scene, saw the appellant take PW1's belongings. Another man, later charged separately, took PW3's phone, iPad, and Kshs 16,000. He also identified the appellant and the recovered items.
 6. PW4, John Katana Kasuku, confirmed that he let PW1 in and was attacked alongside him. He was kicked and robbed of his BlackBerry phone. He identified the appellant as the man giving orders during the robbery and confirmed this at the parade.
 7. PW5, ASP Florence Karani, a ballistic expert, examined the recovered weapon and found it was an imitation rifle. PW6, Inspector Geoffrey Omwenga, conducted the identification parade where four witnesses, including PW2, PW3, and PW4, picked out the appellant.
 8. PW7, Inspector Kennedy Muthamia, visited the scene and noted the guards could not explain how the robbers accessed the premises. They were arrested but later released due to a lack of evidence linking them to the crime. PW8, PC George Ngure, testified that he arrested the appellant and recovered a toy pistol and, later, stolen electronics from various locations. PW9, Wycliffe Wamalwa, was found with an iPad and keyboard later identified by PW3 as stolen.
 9. PW10, Sergeant John Namnosu, the investigating officer, confirmed the sequence of arrests and recovery. He testified that the appellant was identified by several witnesses and linked to the recovered items.
 10. In his defence, the appellant testified as DW1. He said he was arrested on 9/2/15 with another person and denied having a fake gun, producing DMFL-1 (exhibit 1). He denied being found with a pistol or panga and produced DMFL-2 (exhibit 2). He said the complainant did not testify and relied on statements by Douglas Ogega, Katana John Kasuku, and Sudi Morara. He denied knowing the co-accused. On cross-examination, he identified the toy pistol, denied signing the inventory, and admitted he was positively identified at the ID parade.
 11. DW2 Isaack Wangila said he was a guard at Ngoloi in 2015. House no.5 was broken into, but he denied knowing the appellant. DW3 Silas Manyonge confirmed DW2's account and said he did not witness any theft.
 12. The appeal was canvassed by way of written submissions by the parties which have been duly considered. In counts, I and II the appellant was convicted of the offence of robbery with violence. 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”.
 13. The first ingredient, being armed with a dangerous or offensive weapon, is addressed in the testimony of PW1 and PW4, who both stated that they were confronted by two armed men. PW5, a ballistic expert, confirmed that the recovered weapon was an imitation rifle. While not a real firearm, an imitation rifle



- qualifies as an offensive weapon for purposes of section 296(2), as it can be used to instill fear and exert control over victims. PW8 also confirmed the recovery of a toy pistol from the appellant upon arrest.
14. The second ingredient is the presence of multiple offenders. All key witnesses specifically PW1, PW2, PW3, and PW4 testified to the presence of at least two assailants during the incident. PW3 described how the appellant took PW1's belongings, while another man, later charged separately, robbed him of his own property. This corroborates that the appellant was in the company of other persons at the time of the offence.
 15. The third element, the use or threat of actual violence, is clearly supported by the evidence. PW1 testified that the attackers pursued him into the house and robbed him. PW4 was physically kicked and robbed of his phone. The level of intimidation involved that included issuing orders and forcing victims to the ground as described by PW2 and PW4, amounted to threats of violence. These actions are sufficient to constitute personal violence under the provision.
 16. In addition, the appellant was positively identified by PW2, PW3, and PW4 during a police identification parade conducted by PW6. Their identification was consistent and based on their interaction with the appellant at close range during the incident. Additionally, PW8 and PW10 confirmed the recovery of items stolen from the complainants, which further links the appellant to the crime.
 17. The appellant's defence did not rebut the prosecution's case. He denied the allegations and challenged the evidence but admitted to being identified at the parade. His alibi was unsupported by independent testimony, and the statements he relied on were already discredited through the oral testimony of the prosecution witnesses. DW2 and DW3, who were security guards at the scene, did not witness the theft and could not account for how the robbers accessed the premises. Their testimony did not assist the appellant's case.
 18. The prosecution evidence, taken as a whole, disclosed the offence of robbery with violence as defined under section 296(2) and demonstrated the appellant's active participation in the incident. The appellant's conviction was therefore proper and is affirmed.
 19. The appellant was sentenced to thirty 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 was excessive.
 20. Therefore, the appeal on the sentence succeeds. The sentence of thirty years imprisonment is hereby substituted with a sentence of twenty (20) years imprisonment to run from 10th February 2015 the date of his arrest pursuant to section 333(2) of the *Criminal Procedure Code*.

Orders accordingly.

JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 27TH DAY OF MAY 2025.

D. KAVEDZA

JUDGE

In the presence of:

Appellant Present

Mutuma for the Respondent

Tonny Court Assistant

