



**Republic v Ogolla (Criminal Appeal E066 of 2024)  
[2025] KEHC 7059 (KLR) (27 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 7059 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
CRIMINAL APPEAL E066 OF 2024  
DR KAVEDZA, J  
MAY 27, 2025**

**BETWEEN**

**REPUBLIC ..... APPELLANT**

**AND**

**CHRISTOPHER ODUOR OGOLLA ..... RESPONDENT**

*(Being an appeal against the original ruling delivered on 11th July 2024 by Hon. D. Mutai (PM)  
at Kibera Chief Magistrate's Court Case No. E1767 of 2023 Republic vs Christopher Ogola)*

**JUDGMENT**

1. The Respondent was charged and acquitted by the Subordinate Court of the offence of malicious damage to property to property contrary to Section 339(1) of the *Penal Code*. The particulars were that on 25<sup>th</sup> March 2023 at about 2100hrs at Jamuhuri Area in Kibra Sub-County within Nairobi County, the respondent damaged a fridge, a microwave, a TV set, a laptop, glass coffee table, a wardrobe, and assorted utensils all valued at Kshs. 191,995/- the property of Irene Awuor Oguma.
2. Aggrieved, the appellant filed an appeal challenging the acquittal. In the petition of appeal, the appellant challenged the holding that evidence of PW1 was not merely hearsay evidence of a single witness but was direct evidence of the malicious damage in her own home; the appellant averred that the damage seen by PW1 in her property was sufficient to raise a prima facie case and put the respondent on his defence; they averred that PW1 had adduced sufficient evidence proving beyond reasonable doubt that the subject property damaged belonged to her; the appellant contends that the testimony of a single witness could prove the offence charged. They urged the court to allow the appeal.
3. This is the first appellate court and in *Okeno v. R* [1972] EA 32, the Court of Appeal for East Africa laid down what the duty of the first appellate court is. It is to analyse and re-evaluate the evidence which was before the trial court and come to its own conclusions on that evidence without overlooking the conclusions of the trial court but bearing in mind that it never saw the witnesses testify.



4. PW1 Irene Awuor, the complainant, testified that the respondent was her former boyfriend. On 25th March 2023 at approximately 9:00 pm, she heard a commotion involving accusations of theft. Upon investigation, she discovered the disturbance originated from her residence. She encountered an individual, Ezra, who informed her that he had been stabbed by the respondent. Although he rode away on his motorbike, he reiterated the same. Upon returning home, she found a bloodstained knife and observed that her television, microwave, laptop, utensils, and tables had been destroyed. The respondent had earlier called her, stating he was at her house and had encountered Ezra.
5. She stated that all the damaged property belonged to her and presented receipts as proof of ownership. She attributed the damage to the respondent and noted that the criminal case was withdrawn without her knowledge or consent. Although she did not witness the respondent entering her home, her neighbour informed her that it was the respondent who was damaging her belongings while she was briefly away at the market.
6. She confirmed that Ezra was present in her house at the material time as they were in a relationship. She explained that her delay in recording a statement was due to disruptions caused by public demonstrations (maandamano).
7. PW2, PC Ben Musumba, received the report on 26th March 2023. He corroborated PW1's account and produced the receipts. He confirmed that Ezra withdrew the complaint in Mombasa and was not visited at the hospital.
8. The prosecution closed its case due to uncooperative witnesses and relied on the evidence on record.
9. The court ruled in favor of the Respondent Christopher and found him to have no case to answer. He was acquitted under Section 210 of the *Criminal Procedure Code*.
10. The main issue for determination is whether a prima facie case was established to warrant the Respondent to be put in his defence in accordance to Section 211 of the CPC.
11. In Republic vs. Abdi Ibrahim Owl [2013] eKLR a prima facie case was defined as follows:

“Prima facie” is a Latin word defined by Black’s Law Dictionary, 8th Edition as “Sufficient to establish a fact or raise a presumption unless disproved or rebutted”. “Prima facie case” is defined by the same dictionary as “The establishment of a legally required rebuttable presumption”. To digest this further, in simple terms, it means the establishment of a rebuttal presumption that an accused person is guilty of the offence he/she is charged with.
12. In Ronald Nyaga Kiura vs. Republic [2018] eKLR wherein paragraph 22 it is stated as follows:

“It is important to note that at the close of prosecution, what is required in law at this stage is for the trial court to satisfy itself that prima facie has been made out against the accused person sufficient enough to put him on his defence pursuant to the provisions of Section 211 of the *Criminal Procedure Code*. A prima facie case is established where the evidence tendered by the prosecution is sufficient on its own for a court to return a guilty verdict if no other explanation in rebuttal is offered by an accused person.”
13. In this case, the Respondent had been charged with the offence of malicious damage to property to property contrary to Section 339(1) of the *Penal Code*.



14. The offence of malicious damage to property is defined under Section 339 (1) of the *Penal Code* as follows;

“Any person who willfully and unlawfully destroys or damages any property is guilty of an offence, which, unless otherwise stated, is a misdemeanor, and is liable, if no other punishment is provided, to imprisonment for five years.”
15. Under the above definition, the elements of the offence may be dissected as; (i) proof of ownership of the property.
  - (ii) proof that the property was destroyed or damaged
  - (iii) proof that the destruction or damage was occasioned by the accused.
  - (iv) proof that the destruction was willful and unlawful.
16. There was clear and undisputed proof of ownership of the damaged property. PW1 testified that the items destroyed which were a fridge, microwave, television, laptop, wardrobe, coffee table, and utensils that belonged to her. She produced purchase receipts in court to support her claim. These were corroborated and presented by PW2, PC Ben Musumba. The receipts constituted documentary evidence of ownership, and no objection or contrary claim was raised. This satisfies the first element of the offence.
17. There was also sufficient evidence that damage to the property had occurred. PW1 testified that upon returning home on the material date, she found the household items broken. She identified the specific items that had been damaged and recovered a blood-stained knife at the scene. Her account was detailed and credible, demonstrating that the destruction was not merely alleged but supported by observable evidence. This satisfies the second element of the offence.
18. On the third element, it was claimed that there was credible evidence linking the respondent to the damage. However, PW1 did not witness the destruction herself. Her testimony relied solely on what she was told by a neighbour who did not testify. Similarly, Ezra — the only other person who could have directly linked the respondent to the incident also did not appear in court. The statements attributed to both individuals were, therefore, hearsay and inadmissible for the purpose of proving the respondent’s involvement.
19. While PW1 testified that the respondent had called her and admitted being at the house and meeting Ezra, she did not claim that he confessed to causing the damage. The blood-stained knife and the damaged items were circumstantial evidence, but without direct testimony from a witness who saw the respondent commit the act, the link remains speculative.
20. The surrounding circumstances may suggest a motive, particularly given the respondent’s past relationship with PW1 and her new relationship with Ezra. However, motive alone cannot substitute for proof of the essential elements of the offence. The prosecution failed to produce a witness who could directly place the respondent at the scene at the time of the destruction or confirm that he was the one who caused the damage.
21. In view of this, the evidence was not sufficient to support a prima facie case. The trial court correctly found that the threshold under Section 210 of the *Criminal Procedure Code* had not been met. The acquittal was neither premature nor erroneous, but a proper application of the law based on the evidence before the court.
22. In the premises, the appeal is found to be lacking in merit and is dismissed.



Orders accordingly.

**JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 27<sup>TH</sup> DAY OF MAY 2025**

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**D. KAVEDZA**

**JUDGE**

In the presence of:

Mutuma for the Appellant

Respondent absent

Tonny Court Assistant

