



REPUBLIC OF KENYA



KENYA LAW
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**Wanjiru v Republic (Criminal Appeal E153 of 2024)
[2025] KEHC 7003 (KLR) (27 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 7003 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL E153 OF 2024**

DR KAVEDZA, J

MAY 27, 2025

BETWEEN

JOHN KIBE WANJIRU ALIAS ANDU APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal against the original conviction and sentence delivered by Hon. M. Maroro (SPM) on 22nd November 2024 at Kibera Chief Magistrate's Court Criminal Case no. E200 of 2024 Republic vs John Kibe Wanjiru Alias Andu)

JUDGMENT

1. The appellant was charged and convicted for the offence of robbery with violence contrary to section 296(2) of the Penal Code. He was sentenced to serve life imprisonment.
2. Being aggrieved, he filed the present appeal challenging his conviction and sentence. In the petition of appeal received on 18th December 2024, the appellant raised 9 grounds which have been coalized as follows: He challenged the totality of the prosecution's evidence against which he was convicted. He complained that his defense was not adequately considered as guaranteed under Article 50 of the Constitution.
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 seven (7) witnesses in support of their case. PW1, Julius Muthuri, a businessman and proprietor of Mutongoi Club, testified that on 24th December 2023, while closing the club, he was attacked by approximately twelve men armed with knives and stones. He sustained a cut to his right hand and injuries to his face and head from a stone. The assailants stole KES 42,000 and



- two mobile phones (an Oppo and a Tecno). He identified the appellant, whom he recognised from the area, and questioned why he was assaulting him. Despite this, the assault continued until he was rescued and later regained consciousness at Mbagathi Hospital.
5. PW1 stated that the appellant evaded arrest for a considerable period. He was familiar with him and noted that the area was well-lit by streetlights. During cross-examination, he confirmed that the appellant was locally known as “Andrew” and had struck him with a stone.
 6. PW2, Fridah Mutungi, the complainant’s wife, was informed of the attack and visited him at the hospital. He informed her that he had identified two attackers Ayub and Andrew alias “Kibe”.
 7. PW3, Mary Kagendo, a saleslady at the club, corroborated PW2’s account. She stated that on 27th December 2023, the appellant returned to the club to purchase alcohol. He inquired about PW1’s condition and remarked that he “did not hit him badly” and had received KES 1,000 from the stolen proceeds. She facilitated his arrest.
 8. PW4, James Mwendwa, witnessed the attack. He too was assaulted and identified the appellant as one of the men. He observed that the area was illuminated by street lighting and that the appellant was among the most vocal in the group. PW5, Calvia Safari, also identified the appellant as one of the attackers. He confirmed the appellant was armed with a stone.
 9. PW6, Kamau Mariga, a medical officer, produced the P3 form confirming the complainant sustained bruises to the right arm, leg, and facial injuries.
 10. PW7, PC Peter Ojwang, recorded the complaint and witness statements. He produced supporting documents but confirmed no stolen items were recovered.
 11. In his defence the appellant gave unsworn evidence and maintained his innocence. He testified that he attended a church vigil (Keshu) and returned home at 12:00hrs. He then closed his case.
 12. 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 issues for consideration by this court are whether the appellant was positively identified and whether the prosecution did prove its case beyond reasonable doubt leading to a proper conviction and sentence.
 14. The offence of robbery with violence under section 296(2) of the *Penal Code* is proved when an act of stealing is committed in any of the following circumstances, that is to say, the offender was armed with a dangerous weapon or that he was in the company of one or more persons or that at immediately before or immediately after the time of the robbery the offender beats, strikes or uses other personal violence to any person (see *Dima Denge Dima & Others v Republic* NRB CA Criminal Appeal No. 300 of 2007 [2013]eKLR and *Oluoch v Republic* [1985] KLR 549)
 15. The first element of robbery with violence requires that the offender be armed with a dangerous or offensive weapon. In this case, PW1 stated that the attackers were armed with knives and stones. PW5 confirmed that the appellant specifically carried a stone. These qualify as offensive weapons under the law, satisfying this element.



16. The second element is that the offender must act in the company of one or more persons. PW1 testified that he was attacked by a group of about 12 men. This was supported by PW4 and PW5, who also identified the appellant as part of the group. The group attack meets this requirement.
17. The third element requires actual violence. PW1 sustained injuries to his head and hand. PW6, the medical officer, confirmed multiple bruises, swelling, and tenderness. This medical evidence corroborated the complainant's account and demonstrated that real physical violence was inflicted.
18. The fourth element is that there must be theft or attempted theft. PW1 said KES 42,000 and two phones were stolen. PW3 testified that the appellant later admitted receiving KES 1,000 from the stolen proceeds. This admission confirmed that theft occurred during the assault.
19. Lastly, the appellant was positively identified by multiple witnesses who knew him personally. PW1 identified him during the attack, and PW3 and PW4 confirmed the same. The area was well-lit, and the identification was consistent. The appellant also made an incriminating statement to PW3. Taken together, the evidence satisfied all elements of robbery with violence under Section 296(2) of the [Penal Code](#). The appellant's conviction was therefore proper and is upheld.
20. On sentence, the appellant was sentenced to life 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 that the sentence imposed shatters all hopes of the appellant for rehabilitation or having another chance to start afresh.
21. Therefore, the appeal on the sentence succeeds. The sentence of life imprisonment imposed by the trial court is hereby substituted with a sentence of twenty (20) years imprisonment. The sentence shall run from 26th January 2024 the date of his arrest pursuant to section 333(2) of the [Criminal Procedure Code](#), Cap 75 Laws of Kenya.

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.

