



REPUBLIC OF KENYA



**Furaha v Republic (Criminal Appeal E002 of 2025)
[2025] KEHC 9358 (KLR) (30 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 9358 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL E002 OF 2025**

DR KAVEDZA, J

JUNE 30, 2025

BETWEEN

BERNARD WISE FURAHA APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal against the original conviction and sentence delivered on 29th August 2024 by Hon. C. Njagi (PM) at Kibera Chief Magistrate's Court Criminal Case no. 349 of 2020 Republic vs Bernard Wise Furaha and 3 others)

JUDGMENT

1. The appellant was charged and after a full trial convicted of two counts of robbery with violence contrary to section 296(2) of the Penal Code. He was thereafter sentenced to fifteen (15) years imprisonment.
2. Being aggrieved, he filed the present appeal challenging the totality of the prosecution evidence against which he was convicted, which he claimed was contradictory. He further contended that the learned magistrate disregarded his plausible defence. 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 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 case was as follows. PW1, Joseph Mburu Ngatia, testified that on the day in question, while at work, he heard screams and rushed to the scene where he found PW2, Stephen Kariuki, struggling with the first and second accused persons outside an M-Pesa shop owned by PW3, Rahab Wanjiru. Upon noticing a third man brandishing a firearm, he fled and hid. He later identified the



- first and second accused persons both at an identification parade and in court. His evidence was corroborated by PW5, Andrew Kinyanjui, who witnessed the robbery and identified the first accused.
5. PW2 confirmed PW1's account, adding that the incident occurred just after he had withdrawn Kshs. 60,000 from PW3's shop. The second accused pointed a firearm at his head, blocked the shop entrance, and ordered him and PW3 to surrender their belongings. The assailants took his Samsung phone. He reported the matter at Kabete Police Station and later identified the first and second accused at an identification parade.
 6. PW3 stated that the robbers stole Kshs. 206,000 and two phones from her, immediately after the first appellant had entered her shop pretending to buy airtime worth Kshs. 10. She accompanied PW2 to the police station to record statements and identified the first and second accused.
 7. PW4, Inspector Patrick Kibet, recalled that upon receiving the robbery report, he proceeded to the scene and arrested the first accused, recovering Kshs. 3,450 from him.
 8. PW6, Chief Inspector Ann Samali, conducted an identification parade where the first and second accused were identified. She produced the identification parade forms in court and was assisted by PW9, PC Earnest Kinyua.
 9. PW7, Joseph Seka Omutore, stated that on the same day, he saw two men fleeing: one ran towards a parked motorcycle while the other threw money into the street, causing passers-by to scramble for it. The man heading to the motorcycle wore a helmet that fell off. PW7 saw that he carried a firearm before he escaped on the motorcycle, while the other was arrested by PW4.
 10. PW8, Inspector Framwel Mureithi, conducted a second identification parade at which the 1st and 2nd accused persons were identified by PW1, PW2, PW3, and PW7. He produced the parade forms in evidence.
 11. PW10, Corporal Jenifer Jepkosgei, photographed a motorcycle presented as an exhibit and prepared a report which she produced in court. Under cross-examination, she admitted she could not confirm that it was the motorcycle used during the robbery.
 12. PW11, PC Ernest Kinya, testified that he assisted PW12, PC John Irungu, the investigating officer, in arresting the second accused. PC Irungu stated that the second accused was arrested after a letter to NTSA linked him to a motorcycle without a number plate, which matched the description of a white Boxer motorcycle used in the escape. The fourth appellant was apprehended with the help of informers. PW13, PC Willy Bungei, also assisted in the investigation.
 13. At the close of the prosecution case, the court found a prima facie case and placed the appellants on their defence. DW1, Kevin Mulingwa, the first accused, claimed that while buying airtime, armed men ordered him to lie down. He fled, members of the public raised an alarm, and he was arrested with Kshs. 3,450 on him. He denied knowing the co-appellants or committing the offence.
 14. DW2, Evans Ochieng, the second accused, denied the offence and alleged that police officers assaulted him during and after his arrest at Kabete Police Station.
 15. DW3, the appellant, denied any involvement. He asserted that he was arrested at work, and the police demanded Kshs. 2,000, and they impounded his motorcycle which was being repaired following an accident the day before. He alleged torture by police and claimed he was subjected to an identification parade after his photo was posted on Facebook. On cross-examination, he admitted the motorcycle had no number plate as it was yet to be issued and failed to produce the Facebook extract.



16. DW4, Evans Juma, said that on the day of the robbery, he watched a football game with the appellant and had lunch with him between 1:20 pm and 1:45 pm.
17. DW5, John Aggrey, stated that the appellant brought his motorcycle for cleaning at his car wash at noon and left with it 30 minutes later. DW6, Sharon Wafula, testified that the appellant, whom she knew, came to her eatery with another man for lunch at 1 pm after watching football.
18. DW7, Emmanuel Furaha, the appellant's brother, testified that he found the appellant with fresh wounds when he visited him at Kabete Police Station.
19. DW8, Lydia Furaha, the appellant's mother, stated that she was informed of her son's arrest by his fiancée. On visiting the station, she paid Kshs. 2,000 for cash bail. She found him with severe injuries but was initially denied access. She claimed that police officers fired shots to disperse her, and her son was identified following photos posted online, after which he fainted and was hospitalised under police guard. She alleged she was asked for Kshs. 1 million for his release.
20. DW9, Abdul Majid Muiruri, witnessed the appellant's arrest and recognised PW4, Inspector Kibet. DW10, Peter Furaha, the appellant's brother, testified that he visited him after his accident a day before the robbery and was with him at 10 am on the day in question. DW11, Habiba Mohammed, stated that the appellant bought fruit from her stall and remained there from 2 pm to 4 pm.
21. DW12, Samuel Kamau, the fourth accused, said he was arrested on his way home from work, beaten, and detained. He denied the offence and did not undergo an identification parade.
22. 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”.
23. In the present matter, the appellant was not shown to have been armed with any offensive or dangerous weapon, nor was he placed at the scene in the company of the persons who committed the robbery. The prosecution sought to link him to the offence merely because he owned a white Boxer motorcycle, which the robbers were alleged to have used to flee. Yet the very officer who took the photographs of that motorcycle confirmed under cross-examination that she could not ascertain whether it was the precise motorcycle involved. Such uncertainty casts considerable doubt on the reliability of this evidence.
24. Further, the identification evidence was not watertight. The appellant was identified by PW1, PW2, PW3, and PW7 during an identification parade held after his arrest and after his photograph had allegedly been circulated on Facebook. This sequence of events raises the likelihood of a tainted identification, undermining its probative value. It is also telling that there was no independent evidence directly connecting him to the planning or execution of the robbery.
25. Moreover, the appellant put forward an alibi which was supported by several defence witnesses who were consistent in their accounts. Their testimonies placed him elsewhere at critical moments before and during the alleged robbery. These accounts were credible and coherent, yet the trial court gave scant consideration to this defence and dismissed it without adequate reasoning. This was a misdirection. Where an alibi is plausible and supported by evidence that remains unshaken under cross-examination, the benefit of doubt must go to the appellant.



26. In the end, the conviction rests largely on circumstantial evidence and flawed identification, neither of which is sufficient to exclude all reasonable doubt. The evidence did not establish that the appellant was present, armed, or acting in concert with the principal offenders.
27. In such circumstances, it would be unsafe to uphold the conviction. There is no convincing nexus between the appellant and the robbery, and the gaps in the prosecution's case are too wide to be bridged by speculation. The prosecution therefore failed to discharge its burden of proof to the required threshold.
28. The upshot of the above analysis is that the appeal is allowed. The trial court's conviction is quashed and the sentence set aside. The appellant Benard Wise Furaha is hereby set at liberty unless otherwise lawfully held.

Orders accordingly.

JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 30TH DAY OF JUNE 2025

D. KAVEDZA

JUDGE

In the presence of:

Appellant Present

Mogere for the Respondent

Tonny Court Assistant.

