



**Githanga v Republic (Criminal Appeal E024 of 2025)  
[2025] KEHC 9312 (KLR) (30 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 9312 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
CRIMINAL APPEAL E024 OF 2025**

**DR KAVEDZA, J  
JUNE 30, 2025**

**BETWEEN**

**YUSUF GITAU GITHANGA ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal against the original conviction and sentence delivered on 16h  
December 2024 by Hon. C. Njagi (PM) at Kibera Chief Magistrate's Court  
Criminal Case no. E770 of 2023 Republic vs Yusuf Gitau Githanga & another)*

**JUDGMENT**

1. The appellant was jointly charged with another not before this court for the offence of robbery with violence contrary to section 296(2) of the *Penal Code*. The particulars are that the appellant on the 24<sup>th</sup> May 2023 at around 1500h along cemetery road in Kibra sub-county within Nairobi County jointly with others not before the court, being armed with a dangerous weapon namely a pistol robbed Robert Benjamin Mark of his mobile phone make iPhone 11 pro worth Kshs.150,000/- and at the time of robbery threatened to use actual violence against Robert Benjamin Mark. After a full trial, he was convicted and sentenced to serve thirty (30) years imprisonment.
2. Aggrieved, he filed the present appeal challenging the totality of the prosecution evidence against which he was convicted. He urged the court to quash the 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 three witnesses in support of its case. PW1, Benjamin Mark, testified that on 24th May 2023, at around 3:00 pm, he was walking his dogs in Ngong Forest when he heard a noise and



was confronted by three men running towards him. One of them, brandishing a short gun, ordered him not to resist. One of the men then grabbed his iPhone 11. PW1 stated that he was not physically harmed during the robbery, though his dogs chased after one of the suspects.

5. After the incident, PW1 walked to the car park where he found a warden and explained what had occurred. He immediately used the 'Find My iPhone' app to track his stolen phone, which showed that the device was located in Soweto, Kibera. He reported the matter to Jamhuri Police Station, and with the assistance of the police, tracked the suspects to a bar near Ngong Karen.
6. PW1 positively identified the three robbers and assisted in apprehending two of them, including the appellant, Yusuf Gitau. The stolen iPhone 11 was recovered and identified by PW1, who noted that it had his photograph as the screensaver, confirming ownership.
7. PW2, PC Dennis Mwrite of Jamhuri Police Station, testified that he received PW1's report at about 3:30 pm and joined the arrest operation. He confirmed that the appellant was found with the complainant's iPhone 11, which was concealed in his private parts. He produced the phone in court.
8. PW3, CPL Bosco Mutua, corroborated the testimonies of both PW1 and PW2, confirming the sequence of events and recovery of the stolen phone.
9. At the close of the prosecution's case, the court found a prima facie case had been established. The appellant, Yusuf Gitau Githanga, gave a sworn defence denying the charges. He claimed that he was arrested arbitrarily while on his way to Thogoto, alleging that PC Maina, his neighbour with whom he had a land dispute, orchestrated his arrest out of malice. He maintained that he knew nothing of the robbery.
10. DW2, the second accused, stated that he was conducting his clothes-selling business at Dagoretti Corner when he was arrested amid commotion. He claimed he was initially asked to write a statement as a witness but was later charged without any knowledge of the robbery.
11. The appeal was canvassed by way of written submission which have been duly considered and there is no need to rehash them.
12. 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. To secure a conviction for robbery with violence under section 296(2) of the [Penal Code](#), the prosecution must prove that the offender was armed with a dangerous or offensive weapon, was in the company of one or more other persons, or used or threatened to use actual violence during the robbery.
14. The complainant testified that the appellant confronted him while armed with a pistol. A pistol qualifies as a dangerous or offensive weapon for purposes of this offence.
15. On the element of being in the company of others, the evidence shows that the appellant did not act alone. The complainant stated that the appellant was in the company of two other individuals when he was attacked. This concerted action meets the requirement under section 296(2).



16. As regards the element of violence or threat of violence, the complainant stated that one of the robbers waved the pistol at him and ordered him not to struggle. The waving of a firearm accompanied by such words amounts to a clear threat of violence.
17. The Court further notes that the issue of identification was satisfactorily addressed. The complainant tracked his phone immediately after the incident, assisted the police in locating the suspects, and positively identified the appellant both at the scene and in court.
18. The appellant's defence was considered. He claimed he was falsely implicated due to a land dispute and denied any knowledge of the robbery. However, this explanation does not weaken the prosecution's consistent and corroborated evidence.
19. Having analysed the evidence in totality, the Court is satisfied that all the statutory elements were proved beyond reasonable doubt. The conviction for robbery with violence was proper and is therefore upheld.
20. The appellant was sentenced to thirty (30) years imprisonment. During sentencing, the court considered the pre-sentence report, the appellant's mitigation, and being a first offender.
21. Although sentences are intended, inter alia, to punish an offender for his wrongdoing, they also aim to rehabilitate offenders to renounce their criminal tendencies and become law-abiding citizens. I have no doubt that the sentence imposed by the trial court, in this case, was lawful but considering that the appellant was a first offender, I am satisfied that the sentence was excessive.
22. For the above reason, I hereby set aside the sentence of thirty (30) years imposed by the trial court and substitute it with a sentence of twenty (20) years imprisonment. The sentence shall run from 25<sup>th</sup> May 2023, the date of the appellant's arrest pursuant to section 333(2) of the *Criminal Procedure Code*, Cap 75 Laws of Kenya.

Orders accordingly.

**JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 30<sup>TH</sup> DAY OF JUNE 2025**

**D. KAVEDZA**

**JUDGE**

In the presence of:

Appellant Present

Mogere for the Respondent

Tonny Court Assistant.

