



REPUBLIC OF KENYA



**KENYA LAW**  
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**Juma v Republic (Criminal Appeal E012 of 2025)  
[2025] KEHC 9360 (KLR) (30 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 9360 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
CRIMINAL APPEAL E012 OF 2025  
DR KAVEDZA, J  
JUNE 30, 2025**

**BETWEEN**

**BILLY SIMIYU JUMA ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal against the original conviction and sentence delivered on 30th May 2024 at Kibera Chief Magistrate's Court, Sexual offence case No. E114 of 2024 Republic v Daniel Kiplagat Matui before Hon. Kabuya I.M (SPM))*

**JUDGMENT**

1. The Appellant was charged and, after a full trial, convicted by the Subordinate Court of the offence of preparation to commit a felony contrary to section 308(1) of the *Penal Code*. The particulars were on 2nd August, 2023 at about 1520hrs at Silanga in Langata within Nairobi County, jointly with others not before the court were found armed with a pistol and knife while at Silanga brandishing the said weapons with the intent to commit a felony, robbery with violence. The second count was assault causing actual bodily harm contrary to section 251 of the *Penal Code*. He was convicted on the 1<sup>st</sup> count and acquitted on the 2<sup>nd</sup> count. He was sentenced to serve seven (7) years imprisonment.
2. Aggrieved, he filed an appeal challenging his conviction and sentence. In his appeal, he challenged the totality of the prosecution's evidence against which he was convicted. He urged the court to quash his conviction and set aside the sentence imposed.
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 that was before the trial court, and come to its conclusions on that evidence without overlooking the conclusions of the trial court but bearing in mind that it never saw the witnesses testify and the conclusions of the trial court but bearing in mind that it never saw the witnesses testify.



4. PW1, Raphael Oluoch, testified that on the material day, the appellant, Billy Juma, confronted him and accused him of being responsible for his friends' imprisonment. The appellant threatened to either shoot or stab him. While trying to remove his jacket, a gun fell from the appellant's possession. He then stabbed PW1 in the face with a knife. PW1's companion, Rachael Atemo, fled and called the police. Members of the public intervened, and the appellant was arrested after resisting and injuring officers. PW1 received treatment at D.C. Health Centre and later reported the matter. He identified the appellant and the knife in court.
5. During cross-examination, PW1 stated that the appellant is his neighbour, known to his family. He confirmed that he pushed the appellant to escape and that the gun was taken by the appellant's brother and another person.
6. PW2, Doris Atieno, corroborated PW1's account, stating the appellant punched him and insisted he must kill her. She also identified the appellant and the knife.
7. PW3, Daniel Opiyo of DCI Lang'ata, confirmed officers were dispatched following a report of public disturbance. The appellant was arrested after resisting and injuring officers. No gun was recovered, but a knife was presented by the arresting officers. He confirmed CCTV captured the events but a fingerprint analysis was not conducted.
8. In his sworn defence, the appellant denied the charges. He claimed he was returning from church when PW1 and PW2 stopped him and questioned him. He alleged he was wrongly arrested, detained for two weeks, and falsely accused due to a tenancy dispute. He denied being possession of any weapon or involvement in the assault. In cross-examination, the appellant claimed he had no dispute with PW1 and did not know why he was falsely accused.
9. The offence of preparation to commit a felony is provided under section 308 of the [Penal Code](#).

Any person found armed with any dangerous or offensive weapon in circumstances that indicate that he was so armed with the intent to commit any felony is guilty of a felony and is liable to imprisonment of not less than seven years and not more than fifteen years.
10. One of the key elements under Section 308 of the [Penal Code](#) is that the accused must be found armed with a dangerous or offensive weapon or instrument. In this case, PW1 and PW2 testified that the appellant was armed with both a gun and a knife. Although the gun fell, the knife was used in the actual attack. The knife was later recovered and produced in court, confirming this element.
11. The second element is the presence of intent to commit a felony. PW1 stated that the accused threatened to kill him and stabbed him with the knife. PW2 witnessed this and confirmed the threats. The nature of the threat, coupled with the violent act, shows a clear intent to cause grievous harm or death, which satisfies the requirement of intent to commit a felony.
12. The third element is conduct showing preparation to commit a felony. The appellant confronted PW1, armed with two weapons, and threatened to kill him. This deliberate action, and the attempted use of both weapons, show that he was prepared to carry out the threat.
13. The appellant gave a sworn defence denying the offence and alleging a false accusation but failed to call any witnesses or provide credible support. His account remained unsubstantiated and did not displace the strong, corroborated evidence of the prosecution.
14. The prosecution, therefore, proved each element under Section 308 beyond reasonable doubt. The conviction by the trial court was proper and is upheld.



15. On sentence, the court considered the appellant's mitigation, status as a first offender, and time in custody, and imposed a sentence of seven years' imprisonment. There is no basis to interfere with the sentence.
16. The upshot of the above is that the appeal is found to be lacking in merit and is dismissed in its entirety.  
Orders accordingly.

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

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**D. KAVEDZA**

**JUDGE**

In the presence of:

Appellant Present

Mogere for the Respondent

Tonny Court Assistant.

