



**Macharia v Republic (Criminal Appeal E134 of 2024)
[2025] KEHC 9278 (KLR) (30 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 9278 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL E134 OF 2024
DR KAVEDZA, J
JUNE 30, 2025**

BETWEEN

GIDEON KARIUKI MACHARIA APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal against the original conviction and sentence dated and delivered on 23rd October 2024 by Hon. S. Temu (SPM) at Kibera Chief Magistrate Court Criminal Case no. E1384 of 2023 Republic v Gideon Kariuki Macharia)

JUDGMENT

1. The appellant was charged with and after a full trial convicted on the offence of stealing a motor vehicle contrary to section 268(1) as read with section 278A of the [Penal Code](#). The particulars are that on the 3rd day of August 2023 at Karen Shell Petrol Station in Lang'ata Sub-County within Nairobi County, the appellant jointly with another not before this Court stole a motor vehicle registration number KCZ 5X2X Toyota Prado Black color valued at Kshs 5 million the property of Purity Mwihaki Wangui Ochieng. He was sentenced to serve six (6) years imprisonment.
2. Being aggrieved, he filed the present petition of appeal challenging the totality of the prosecution's evidence against which he was convicted. In his detailed submissions, he contended that the prosecution failed to discharge their burden of proof, that an unfair burden of proof was placed on the appellant, and that the prosecution case was marred with contradictions. 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 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. The prosecution availed six (6) witnesses in support of their case. PW1, Purity Mwihaki Ochieng, the registered owner of the motor vehicle in question, testified that she had entrusted her vehicle to Nanika Executive Business for car hire services. Matters proceeded without incident until 6th August 2023, when Kevin, the CEO of Nanika, informed her that the vehicle could no longer be traced through its tracking system. He indicated that the vehicle had been hired for transport to Nakuru.
5. PW1 independently tracked the vehicle's signal to Uganda and promptly informed a relative in the region, who in turn contacted the Ugandan police. At around 11 a.m., she received a call confirming that a similar vehicle had been intercepted. She was asked to send a photograph of the vehicle's logbook to verify ownership. Upon confirmation of the chassis number, four persons found in the vehicle were arrested and later repatriated to Kenya from Kampala Police Station.
6. PW2, Hillary Mwangani Sai, recalled that PW4, Kevin Ogutu, had expressed an intention to hire the car for three days. PW2 dispatched PW3, John Wachira, as the driver to deliver the vehicle to the client and ensure that a hiring agreement was duly signed. The signatories to the agreement were Fabian Makau and the appellant. When the vehicle was not returned within the agreed period, PW2 used the tracking system and traced it to Uganda, subsequently reporting the matter to Kilimani Police Station. PW3 confirmed this account and added that PW4 had paid Kshs 30,000 for the hire. He accompanied PW2 to Kilimani Police Station to record statements.
7. PW4, Kevin Ogutu, owner of another logistics company, stated that on 2nd August 2023, he accompanied the appellant and Fabian Makau to Nanika Executive to collect the vehicle from PW3. A sum of Kshs 36,500 was paid to PW3, and it was agreed that Fabian would return the vehicle after three days. When the vehicle was not returned and the clients could not be reached, he informed Nanika Executive, and the vehicle was traced to Uganda.
8. PW5, PC Mercy Musya, testified that after receiving intelligence on the stolen vehicle's whereabouts, she liaised with Ugandan police who had detained the vehicle. The car was brought to the border along with three suspects, who were handed over to PC Zakari Munene, the investigating officer. She identified the appellant in court.
9. PW6, PC Zakari Munene, corroborated PW5's evidence. He produced various exhibits including the appellant's identity card, the car hire agreement, Fabian Makau's identity card, letters exchanged with Uganda Interpol, the vehicle's insurance certificate, two sets of number plates, one original and one re-registered in Uganda under the appellant's name, and photographs of the recovered vehicle. He confirmed that Ugandan authorities handed over three individuals: Erick Munge Magu, Fabian Makau Usamba, and the appellant.
10. At the close of the prosecution case, the trial court found that a prima facie case had been established requiring the appellant to offer a defence. The appellant denied the charges, claiming he had been using the vehicle to transport a terminally ill friend to Kenyatta National Hospital. He stated that they lost their way near Atiak Police Station, where they were arrested under suspicion of vehicle theft. He alleged that they were detained at Guru Police Station for three weeks before being moved to Busia and finally to Kilimani Police Station, where money was demanded from them. He denied ever hiring a car from Nanika Executive and expressed surprise that his identity card was found at Nanika.
11. Section 278A of the *Penal Code* provides as follows:
 - 278A. Stealing motor vehicle
If the thing stolen is a motor vehicle within the meaning of the *Traffic Act* (Cap. 403), the offender is liable to imprisonment for seven years.



12. The element of theft of the motor vehicle was sufficiently demonstrated through credible evidence placed before the court. PW1, the registered owner, confirmed that she did not authorise the vehicle to be taken outside the country and only became aware of its disappearance when the tracking system was disabled.
13. The appellant, having hired the vehicle together with his accomplice, deliberately switched off the trackers to conceal its movement. It was later traced to Kampala, Uganda, where the appellant had taken steps to fraudulently register the vehicle under his own name and obtain a Ugandan certificate of insurance. These documents were produced in court by the investigating officer and clearly link the appellant to the unlawful taking. The actions of disabling the tracking device, crossing the border without permission, and securing false registration and insurance in a foreign jurisdiction all point to a clear intent to permanently deprive PW1 of her property.
14. The chain of evidence, including the car hire agreement and the recovery of the vehicle with altered registration details, firmly supports the prosecution's case that the appellant stole the motor vehicle.
15. The upshot of the analysis above is that the appellant's conviction was proper and is upheld.
16. The appellant was sentenced to six (6) years imprisonment. During sentencing, the court considered the appellant's mitigation, the time spent in custody, and the fact that the appellant is a first-time offender. Based on this premise, I see no reason to interfere with the sentence.
17. In the end, 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

D. KAVEDZA

JUDGE

In the presence of:

Appellant Present

Mogere for the Respondent

Tonny Court Assistant.

