



Marimba alias Otemba Marimba & 2 others v Republic (Criminal Appeal E157, E155 & E156 of 2024 (Consolidated)) [2025] KEHC 9303 (KLR) (30 June 2025) (Judgment)

Neutral citation: [2025] KEHC 9303 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL E157, E155 & E156 OF 2024 (CONSOLIDATED)**

DR KAVEDZA, J

JUNE 30, 2025

BETWEEN

DIDMUS MARIMBA ALIAS OTEMBA MARIMBA 1ST APPELLANT

RENSON MUTOLA ALIAS MAYOYO ‘TOLA 2ND APPELLANT

DUNCAN SIMBA ALIAS NYAMONGU DAN KADERE 3RD APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal against the original conviction and sentence delivered on 5th December 2024 by Hon. Kabuya I.M (SPM) at Kibera Chief Magistrate’s Court Criminal Case no. E205 of 2023 Republic vs Didmus Marimba alias Otemba Marimba and 4 others)

JUDGMENT

1. The appellants were jointly charged and after a full trial convicted for the offence of robbery with violence contrary to section 296(2) of the *Penal Code*. The particulars are that the appellant on the 17th day of November 2022 along Mbagathi Road within Nairobi County jointly armed with a pistol onboard motorcycles, Boxer red in color Registration No. KMGA XXXY and a Boxer White in color Registration No. KMGD XXXA robbed Abdi Basit Alio Eda of his mobile phone of make iPhone X values at Kshs. 100,000 and a bag containing assorted documents as per the attached inventory and at the time of robbery used actual violence against the said Abdi Basit Alio Eda. They were each sentenced to serve thirty (30) years imprisonment.
2. Aggrieved, the appellants filed the present appeal challenging their conviction and sentences. In the respective petitions of appeal which were consolidated, they challenged the totality of the prosecution evidence against which they were convicted. They complained that their identification was not proper.



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 case was as follows. PW5, Abdi Basit Alio Eda, testified that on the day in question, while heading to school, he was accosted by two men emerging from a bush, one armed with a dagger and the other with a pistol. A third man waited nearby on a motorcycle. They held the pistol to his stomach and robbed him of his phone, his bag, and documents belonging to PW1, Namwa Collins Ipepo.
5. PW2, Inspector Rueben Kiptum, produced a ballistics report showing that one of the recovered pistols was a genuine firearm under the *Firearms Act*, while the other was merely an imitation as it was incapable of discharge. PW3, PC Phillip Omwega, stated that together with his colleagues, he arrested the first and third appellants and a third accused person, recovering the weapons and a white Boxer motorcycle with registration KMAN XXXA.
6. PW4, Inspector Ndunda, testified that following multiple reports of robbery with violence lodged at Capital Hill Police Station, he commenced investigations which led to the arrest of the first and third appellants and the third accused. They were found on a white Boxer motorcycle registered as KMGDXXX and were found in possession of the stolen documents and two pistols. He produced the inventory form in court.
7. PW1 confirmed that he had entrusted his documents to PW5 for safekeeping and later recovered them from Capital Hill Police Station about a month after the robbery. These included his original birth certificate, diploma certificates, a copy of his ID waiting card, passport photos, and an admission letter.
8. PW6, Inspector Evans Murage, conducted an identification parade where the second appellant was identified and he tendered the parade form in evidence. PW7, Inspector Erick Ochugu, presented the items recovered from the suspects and confirmed that the first and third appellants and the third accused were apprehended while riding a white Boxer motorcycle. This was corroborated by PW8, PC Edward Muema.
9. At the close of the prosecution's case, the court found a prima facie case had been made out and placed the appellants on their defence. DW1, Zubeda Ibrahim, testified that she visited Capital Hill Police Station when she learnt of her nephew's arrest and witnessed the second appellant's identification parade.
10. DW2, Didmus Marimba, the first appellant, denied committing the offence or possessing a firearm, claiming he was working in Roysambu that day and was arrested merely for being a tout. DW3, Renson Mutola, denied the offence and any association with his co-accused, stating he was arrested a month after the incident.
11. DW4, Maxwell Juma, similarly denied any involvement, stating he was arrested in a cannabis den and had no prior interaction with the co-accused. DW5, the third appellant, claimed he was simply transporting the first appellant and the third accused as passengers and that the bag he carried belonged to the first appellant. DW6, Albert Kariuki, stated he was arrested only for speeding on his motorcycle, was not found with any stolen items, and did not participate in an identification parade.
12. DW7, Albert Maina, gave an alibi for DW6, saying they were together at a phone repair shop. DW8, Lilian Moraa, testified that she was with the third appellant at home from 9 am to 2 pm on the day the robbery occurred.



13. 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”.
14. The first ingredient, being armed with a dangerous or offensive weapon, is satisfied by PW5’s clear testimony that one assailant pressed a pistol to his stomach while another wielded a dagger. PW2’s ballistics report confirmed that one recovered pistol was a genuine firearm under the *Firearms Act*, demonstrating the real threat posed to the complainant’s life.
15. The second ingredient, actual violence or threat of violence, is shown by the use of the pistol to intimidate PW5 into surrendering his phone, bag, and PW1’s documents. The complainant was in fear of immediate harm. This fear was not speculative but credible and is reinforced by the recovery of the stolen items and weapons during the appellants’ arrest, which supports the complainant’s account that force or threat was used to steal.
16. The third ingredient, that the offence was committed by more than one person, is established by PW5’s evidence that two men robbed him while a third waited on a motorcycle. PW4, PW7, and PW8 confirmed the appellants were arrested together on a white Boxer motorcycle and found with the stolen property, proving they acted jointly in the execution of the robbery.
17. Their respective defences did not otherwise dislodge the strong prosecution’s case supported by evidence. The conviction against the appellants was proper and is upheld.
18. The appellants were each sentenced to thirty (30) years imprisonment. During sentencing, the court considered the appellants’ mitigation, the time spent in custody, and being first offenders. Based on this premise, I see no reason to interfere with the sentence.
19. 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:

Appellants Present

Mogere for the Respondent

Tonny Court Assistant.

