



REPUBLIC OF KENYA



**KENYA LAW**  
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**Muthoni v Republic (Criminal Appeal E070 of 2024)  
[2025] KEHC 9302 (KLR) (30 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 9302 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
CRIMINAL APPEAL E070 OF 2024**

**DR KAVEDZA, J**

**JUNE 30, 2025**

**BETWEEN**

**JOSEPH KIBERA MUTHONI ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal against the original conviction and sentence delivered by Hon. Kabuya I.M (S.P.M) on 28th FEBRUARY 2024 at Kibera Chief Magistrate's Court Criminal Case No. E.1173 of 2020 Republic vs Joseph Kibera Muthoni)*

**JUDGMENT**

1. The appellant was 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 of the offense are that on the 21st day of October 2020 at around 1430 hours at Kauria Close in Kileleshwa within Nairobi County, jointly with others not before the court robbed Alex Atumbwa Kshs.9,000 and immediately after the time of such robbery, wounded the said Alex Atumbwa. He was sentenced to serve twenty (20) years imprisonment.
2. Aggrieved, he filed the present appeal challenging his conviction and sentence. In his petition of appeal, he challenged the totality of the prosecution's evidence against which they were convicted. They contended that the trial court failed to prove beyond reasonable doubt. In addition, the sentence meted out was unlawful. They urged the court to quash the conviction and set aside the sentence imposed.
3. As this is a first appeal, it is the duty of this court, as the first appellate court, to reconsider, re-evaluate, and re-analyze 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 five witnesses to prove its case. PW1, the complainant, testified that on the material day at about 2:30 pm, he encountered three men on a motorbike. They maneuvered



- suspiciously, turning around twice before one parked while two advanced towards him. They demanded that he hand over everything he had.
5. One suspect held his jacket, restraining his hands. When he resisted, one of the men, armed with what appeared to be a gun, threatened to shoot him. Despite this, PW1 continued to resist and was struck four times on the head with the gun, causing him to fall and bleed. He screamed for help, and a gardener attempted to intervene by throwing stones. PW1 managed to grab one of the assailants by the foot and dragged him as the others fled. A security guard raised an alarm, shouting “Thieves!”, causing one of the attackers to escape on the motorbike. PW1, with help from the public, held onto the appellant who was later arrested.
  6. PW1 identified the appellant in court and confirmed he was the one apprehended at the scene. He later sought treatment at Kileleshwa Medical Plaza, producing treatment and discharge notes. On cross-examination, PW1 confirmed that the phone taken was worth Kshs 9,000, though the appellant did not have it when arrested.
  7. PW2, PC Mathew Ndatho, testified that he found PW1 at the station bleeding from the head. His account matched PW1’s version. He confirmed that the weapon recovered was an imitation gun. PW3, a security guard, testified that she responded to PW1’s distress call, saw the robbers with a motorbike, and witnessed the assault. She confirmed CCTV footage existed but had been erased after two days. She corroborated that the gun appeared real.
  8. PW4, a police constable and firearms expert, examined the weapon and concluded it was an imitation firearm incapable of firing but could intimidate unsuspecting victims. PW5, a medical officer, produced medical evidence confirming that PW1 sustained a scalp wound caused by a metallic object shaped like a gun.
  9. At the close of the prosecution’s case, the court found a prima facie case and placed the appellant on his defence. The appellant denied the offence, claiming he had been stopped and attacked by security guards and a gardener who wrongly suspected him of committing the offence. He maintained there was no motorbike at the scene and denied knowing the complainant. On cross-examination, he repeated that he was stopped and beaten without cause and denied participating in any robbery.
  10. The appeal was canvassed by way of written submissions which have been duly considered.
  11. 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”.
  12. PW1 and PW3 gave consistent accounts that the appellant was in possession of what appeared to be a firearm, which he used to repeatedly strike PW1 on the head, causing him to bleed. The imitation firearm was recovered and produced in court through the investigating officer’s testimony. From the prosecution evidence, the Court is satisfied that the element of being armed with a dangerous or offensive weapon has been established.
  13. On the element of actual violence, PW1 testified that he was struck four times on the head with the firearm, causing visible injuries. This was confirmed by PW5, who produced the treatment and medical notes indicating the nature of the injuries sustained. The violence used was sufficient to meet the threshold under the law.



14. PW1's evidence shows that his mobile phone, valued at Kshs 9,000, was forcibly taken during the incident. Though the phone was not recovered from the appellant at arrest, the sequence of events demonstrates that force and threats of violence were used to rob him.
15. PW1 positively identified the appellant in court as the person he dragged and restrained at the scene. This identification was corroborated by PW3, who witnessed the incident. The Court finds the element of identity satisfactorily proved.
16. The Court also considered the appellant's defence, in which he denied any involvement and claimed he was wrongly accused. However, this defence did not dislodge the clear, corroborated evidence linking him to the offence. Accordingly, the conviction for robbery with violence was proper and is upheld.
17. During sentencing, the Court took into account the appellant's mitigation, the fact that he was a first-time offender, and the period he had already spent in remand. The trial court noted that he had been in custody for three years, which was considered in reducing the sentence from what would have been twenty-three years to twenty years imprisonment. The sentence imposed reflects both the seriousness of the offence and the time already served, ensuring a fair and proportionate outcome in the circumstances.
18. 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 30<sup>TH</sup> DAY OF JUNE 2025**

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**D. KAVEDZA**

**JUDGE**

In the presence of:

Appellant Present

Mogere for the Respondent

Tonny Court Assistant.

