



REPUBLIC OF KENYA



KENYA LAW
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**Njenga v Republic (Criminal Appeal E139 of 2024)
[2025] KEHC 9290 (KLR) (30 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 9290 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL E139 OF 2024**

DR KAVEDZA, J

JUNE 30, 2025

BETWEEN

MOSES MWANGI NJENGA APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal against the original conviction and sentence delivered by Hon. Kabuya I.M (S.P.M) on 22nd February 2024 at Kibera Chief Magistrate's Court Criminal Case No. E.1275 of 2023 Republic vs Moses Mwangi Njenga)

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. He was sentenced to serve thirty-five (35) 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 he was convicted. He complained that the sentence imposed was unlawful. He urged the court to quash his 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 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 four witnesses in support of their case. PW1, Christine Nafula, testified that on 16th August 2023 at around 3:00 pm, she was walking along the Southern Bypass while using her phone when a motorcycle with three men slowed down beside her. The pillion passenger seated at the rear struck her face in an attempt to make her drop her phone. When this failed, the motorcycle



- stopped, and the said passenger alighted and attempted to snatch her phone. She screamed, prompting him to flee back toward the motorcycle. However, the rider was delayed, and she managed to grab the passenger.
5. She positively identified the appellant as the one who attempted to snatch her phone. She stated that as members of the public approached, the appellant handed her phone back. The rider fled, leaving the appellant behind. While struggling on the ground, the appellant drew a knife from his trouser pocket and stabbed her on the left elbow. Members of the public intervened and subjected the appellant to mob justice before police officers arrived and rescued him. PW1 later sought treatment at Nile Nursing Hospital.
 6. PW1 confirmed her ability to recognise the appellant because they had physically struggled during the incident. She maintained her identification throughout her testimony.
 7. PW2, Dr. Kamau Mariga, a police surgeon, examined PW1 and produced a P3 Form. He confirmed that PW1 had suffered a stab wound to her left hand. The degree of injury was assessed as harm.
 8. PW3, PC Masengeli of Mutuini Police Station, stated that he was on duty on the material day and was called to respond to a case of mob justice. He found the appellant severely beaten by the crowd. The officers rescued him and recovered a knife believed to have been used in the attack. The appellant was escorted to the hospital, and the matter was handed over to the investigating officer.
 9. PW4, PC Juma, the investigating officer, corroborated the above. He confirmed that the appellant's clothes were soaked in petrol, and the knife was recovered and secured. Upon the appellant's recovery, statements were recorded, and the appellant was found culpable.
 10. In his defence, the appellant stated that he is a boda-boda rider from Dagoretti. He claimed that on the material day, a client (PW1) asked to be picked up. His motorcycle developed mechanical issues, so they proceeded on foot. He alleged that PW1 made sexual advances towards him, which he rejected, prompting her to scream and falsely accuse him of theft. He denied the charges and claimed the incident was fabricated.
 11. The appeal was canvassed by way of written submissions by the parties which have been duly considered. 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. The first ingredient of the offence of robbery with violence is theft. PW1 testified that the appellant snatched her phone during the incident. She clearly stated that it was the appellant who took the phone from her, and this was corroborated by the testimonies of PW3 and PW5, who confirmed seeing the appellant at the scene.
 13. The second ingredient is the use or threat of violence at or immediately before or after the theft. PW1 stated that the appellant drew a knife from his back pocket and stabbed her on the left elbow during a struggle. This act of violence was linked to the theft. The medical evidence, through the P3 form, confirmed that she sustained injuries, which were classified as harm. This confirms the use of actual violence.



14. The third ingredient is the presence of more than one person during the robbery. PW1 testified that the appellant was in the company of two others on a motorcycle. This evidence was not disputed and establishes that the offence was committed by more than one person.
15. The final ingredient is the identification of the offender. PW1 positively identified the appellant as the person who snatched her phone and stabbed her. PW3 and PW5 also placed him at the scene, reinforcing the accuracy of the identification.
16. The prosecution proved each element beyond reasonable doubt. The appellant's conviction was proper and is affirmed.
17. The appellant was sentenced to thirty-five years' imprisonment. The trial court considered that he was a repeat offender but also noted his age (29 years) and exercised discretion in sentencing.
18. Under section 329 of the *Criminal Procedure Code*, the court is empowered to consider mitigation and impose a sentence proportionate to the offence, even where a specific penalty is prescribed by law. In this case, the sentence imposed was excessive and overlooked the appellant's potential for rehabilitation.
19. Accordingly, the appeal on the sentence partially succeeds. The sentence of thirty-five years is set aside and substituted with a term of twenty (20) years' imprisonment. The sentence shall run concurrently from 16th August 2023 the date of the appellant's arrest, pursuant to section 333(2) of the *Criminal Procedure Code*.

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.

