Nguu v Republic (Criminal Appeal E040 of 2016)
[2025] KEHC 9555 (KLR) (25 June 2025) (Judgment)

Neutral citation: [2025] KEHC 9555 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT KITUI

CRIMINAL APPEAL E040 OF 2016

LW GITARI, J

JUNE 25, 2025

BETWEEN

MUNUVE KIEMA NGUU ..... APPELLANT

AND

REPUBLIC ..... RESPONDENT

JUDGMENT

1. The appellant was charged with three counts namely; robbery with violence contrary to Section 296[2] of the *Penal Code* and two counts of assault causing actual bodily harm contrary to Section 251 of the *Penal Code*. He was charged in Kitui Chief Magistrate's Court Criminal Case No. 2068 of 2016. The accused denied the charges.

2. The learned magistrate conducted a full trial and in the end the accused was convicted of robbery with violence contrary to Section 296[2] of the *Penal Code*, second count [2] of Assault causing actual bodily harm and count 3 of Assault causing actual bodily harm country to Section 251 of the *Penal Code*. The appellant was ordered to serve twenty-five [25] years imprisonment for the offence of robbery with violence. On the 2nd & 3rd counts the appellant was sentenced to served one-year imprisonment on each count.

3. The appellant was dissatisfied with the conviction and sentence. He filed this appeal which ws based on e following grounds:

    1. That the learned trial magistrate grossly erred in both law and in fact by failing to consider that there was no cogent and credible evidence to connect the accused to the commission of the alleged offence and also failed to consider the sharp contradictions in the prosecutions case contrary to Section 163 of the *Evidence Act*.

2. That the learned trial magistrate erred in both law and in fact by failing to consider that the sentence imposed on the appellant ws manifestly harsh disproportionate and excessive in the circumstance.

3. That the learned trial magistrate erred in law and in fact by failing to adequately consider the appellant's defence.

4. That the learned trial magistrate erred in law and in fact in finding that the prosecution had proved its case beyond reasonable doubt.

5. That the learned trial magistrate failed in law and in fact by disregarding the appellant submission and arguments therein.

He prays that the appeal be allowed, the sentence be set aside varied and/or quashed. The respondent opposed the appeal and prays that it be dismissed.

The Prosecution Case

4. PW1 Muthami Nzaka testified that on 18/10/2016 he reported for duty where he used to work as watchman and guarding PW6 shop which was at Mwitika town at around 02.00am on 19/10/2016. He was attacked by three thugs, first one of them demanded his mobile phone he told them he does not have a mobile phone. The accused entered the compound and attacked him.

5. The accused slapped him on the face. The accused grabbed him and another man joined him they overpowered him they dragged him to a place where he found another man who had been kidnapped [PW2]. He managed to identify one of them who ws armed with homemade spear. He threatened to pierce him with spear for looking at him. They were taken to a valley where they were abandoned. One of the attackers who was armed with a panga hit him with a panga. After the thugs went away, they managed to untie themselves. When he went back to the shop, he found the shop had been broken into and shop items stolen. He reported to the police and later went to the hospital. He was treated and P3 form issued to him showing he sustained injuries. He further told the court that he was able to identify the accused on strength of light from moon and further that he was not knowing the accused there before so he could not be harboring any grudge against him such that he can falsely testify against him.

6. PW2 testified that day he was also kidnapped together with PW1 but he was not able to identify any of the attackers. He also told the court that the thugs broke into the shop he was guarding and stole shop goods belonging to Kinyuva Mutie. He was injured and P3 form was filled at the hospital showing that he was injured.

7. PW3 told the court that on 19/10/2016 at around 2.00am he was attached by 2 men while guarding the shop of Kamwetu Muoki at Mwitika town. He was able to identify one of the attackers as the accused whom he had seen there before he attacked him. The accused beat him and left him for dead. He was joined by another man who hit him on his head using a stick. That day there was a clear moon light he was able to see the attackers very well. He lost consciousness. After he regained, he alerted other watchmen what had happened. Later he come to learn they had been also attacked.

8. One Monica called him and explained what had happened. He was rushed to hospital. A P3 form was filled after he was treated. PW4 the clinical officer produced P3 forms for PW1, PW2 and Pw3 which he filled and examined them as exhibits. He also produced the treatment note h made after he treated them as exhibits.

9. PW5 Chief Inspector of Police Wilson Kanguru told the court that he did an identification parade at Zombe Police Station. The accused was identified by the three complainants by touching him on his

shoulders. PW6 Mumo Luulu told the court the shop was broken into an assorted shop goods and money was stolen. Those who stole injured his watchman [PW1]. PW1 told him that he was able to identify the accused as one of the robbers. On 5/11/2016 he was called at Zombe police station he was shown 137 parcels mastermind cigarettes, a mobile phone which was not his, a hoe made spear and a panga. The police told him the items were recovered from the accused home. He identified the mastermind cigarettes as his, which were stolen from the shop. He produced a receipt which he was given after he bought the cigarettes as exhibits. He also produced a county government of Kitui trading licenses as an exhibit to show he was operating a shop at Mwitika town.

10. PW7 Chief Inspector Chebuketi testified that on 4/11/16 at around 7.00pm the accused went to Mwitika police station and reported that people were alleging he was involved in a robbery incident with in Mwitika town and it was true that he was a suspect. He placed him in to the police cells and later handed him to DCI in Mutitu. The accused led police to his house where they recovered under the bed, local made spear, an axe, a panga, packets of cigarettes and a rope from PW1 and a cut padlock of the shop broken into. Pw8 Corporal Nixon Kabulu produced MFI 1 to MFI 10 as exhibits the prosecution case was closed at the stage.

Defence case

11. When the accused was placed on his defense he denied committing the offence. He said it was true he took himself to Mwitika Police Station after he heard the police was looking for him when he went to the police station he was arrested and taken to Zombe police station. While there three men came and said they did not see him at the time of robbery but when they came to court PW1 and PW3 said they saw him as one of the robbers.

12. His witness Koki Munuve his wife told the court that on the material day while asleep with accused they heard commotion outside. The following day they heard that there was a robbery. Later after one month the accused was arrested on allegation that he was one of the robbers which was not true. The accused closed his defense at that point.

Appellants Submissions

13. The appellant submits that he has challenged the validity and sustainability of the two courts of assault causing actual bodily harm contrary to Section 251 of the *Penal Code* in view of the particulars of the first count of robbery with violence. The appellant has argued grounds 1B & C together and submits that if it was proved beyond any reasonable doubts in court 1, that the victims were assaulted or meted with any form of violence then it is the assault or the violence that constituted the offence of robbery with violence.

14. It is contended that the single act or series of assaults that happened or was occasioned during the robbery were acts or conduct that constitute he singular offence of robbery with violence and armed with often give weapons. The contention is that the assault was part and parcel of the offence under Section 296 [2] of the Penal code and not a separated or isolated incident. He relies on Section 6 of the *Evidence Act* which provides that:

> "Facts which, though not in issue are so connected with a fact in issue as to form part of the same transaction are relevant whether they occurred at the same time and place or at different times and places."

15. The appellant has argued that the assaults formed one continuous transaction but not two separate distinct offences. That the facts constitute a set of circumstances indicating that the offence that was

committed was a violet robbery. The appellant relies on Nathan v Republic [1965] E.A 777. That the learned magistrate erred by convicting the appellant with both robbery with violence and assault. Ground 1A: it is submitted that the offence that was disclosed was shop breaking and not robbery with violence.

16. On Ground 1D it is submitted that the doctrine of recent possession was applicable. It is however submitted that no evidence was availed to show that the appellant was taken to his house from the police station and no inventory was produced. It is submitted that the testimony was not credible. The appellant disputes the evidence of identification as the police did not arrest although they had been given his name. the contention is that PW1 did not identify the appellant as he did not give his name.

Respondents Submissions

17. He submits the offence of robbery with violence was proved. He relies on Oluoch v Republic [1985] KLR and Juma Mohamed Ganzi & 3 Others v Republic. He submits that the ingredients of the offence were established. He further submits that the appellant was identified as one of the attackers and police recovered stolen items from his house. On the defence of the appellant it is submitted that he is the one who led police to recover the items. That the sentence meted out was not harsh and should be upheld.

Analysis and Determination

18. I have considered the proceedings and Judgment before the trial court, the grounds of Appeal and the submissions. The issues which arise for determination are:

    1. Whether the charges preferred against the appellant were properly before the court.
    2. Whether on the facts and evidence adduced, the offence of robbery with violence was disclosed.
    3. Whether the doctrine of recent possession was applicable.
    4. Whether the charges were proved beyond any reasonable doubts.

19. This is a 1st appeal and this court has a duty to analyze the evidence adduced before the trial court, evaluate it and come up with its own independent finding. In Okeno v Republic [1972] E.A 32. The court of Appeal set out the duties of the first appellate court as follows:

> " An appellant on a first appeal is entitled to expect the evidence as a whole to be submitted to a fresh and exhaustive examination [Padya v Republic [1957] E.A 336] and the appellate courts own decision on the evidence. The first appellate court must itself weigh the conflicting evidence and draw its own conclusion. Shantilal M. Ruwala v R [1957] E.A 570. It is not the function of a first appellate court merely to scrutinize the evidence to see if there was some evidence to support the lower court's finding and conclusion. It must make its own findings and draw its own conclusion; only then can it decide whether the magistrate's fining should be supported.
>
> In doing so, it should make allowance for the fact that the trial court has had the advantage of hearing and seeing the witnesses."

20. In Padya v Republic [1958] E.A 336. The court of Appeal for Eastern Africa state as follow:

> " On a first appeal from conviction by a Judge or magistrate sitting without a jury the appellant is entitled to have the appellate court's own consideration and views of the evidence as a whole and its own decision thereon. It has a duty to rehear the case and reconsider the witnesses before the Judge or magistrate with such other material as it

may have decided to admit. The appellate court must then make up its own mind, not disregarding the Judgment appealed from but carefully weighing and considering it. When the questing arises which turns on manner and demeanor, the appellate court must be guided by the impression made on the magistrate or the Judge who saw the witness, but there may be other circumstances quite apart from manner and demeanor which may show whether a witness is credible or not which may warrant a court differing from the Judge or magistrate even on a question of fact turning on the credibility of a witness who the appellate court has not seen."

21. The Court of Appeal in Kiilu & Another v Republic [2005] 1KLR, appreciated that:

> " 1. An appellant on a first appeal is entitled to expect the evidence as a whole to be submitted to a fresh and exhaustive examination and to the appellate court's own decision on the evidence. The first appellate court must itself weigh conflicting evidence and draw its own conclusions.
>
> 2. It is not the function of the 1st appellate court merely to scrutinize the evidence to see if there was some evidence to support the lower court's findings and conclusions. In doing so, it should make allowance for the fact that the trial court had the advantage of having and seeing the witnesses."

22. The first appellate court is mandate to consider matters of fact and Law. Section 347[2] of the *Criminal Procedure Code* provides that:

> " An appeal to the High Court may be on a matter of fact as well as on matter of law."

23. Whether the charges were properly before court

Section 134 of the *Criminal Procedure Code* provide that the charge must contain the statement of the specific offence with which the accused is charged with and enough information o demonstrate the nature of offence charged. Section 134 *Criminal Procedure Code* provides:

> " Every charge or information shall contain, and shall be sufficient if it contains, a statement of the specific offence or offences with which the accused person is charged, together with such particulars as may be necessary for giving reasonable information as to the nature of the offence charged."

24. On the other hand, Section 137 lays down the Rules for framing charges and information. It provides:

> " The following provisions shall apply to all charges and informations, and, notwithstanding any rule of law or practice, a charge or information shall, subject to this Code, not be open to objection in respect of its form or contents if it is framed in accordance with this Code—
>
> a.
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> i. Mode in which offences are to be charged.—a count of a charge or information shall commence with a statement of the offence charged, called the statement of offence;
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> ii. the statement of offence shall describe the offence shortly in ordinary language, avoiding as far as possible the use of technical terms, and without necessarily stating all the essential

elements of the offence, and if the offence charged is one created by enactment shall contain a reference to the section of the enactment creating the offence;

iii. after the statement of the offence, particulars of the offence shall be set out in ordinary language, in which the use of technical terms shall not be necessary: Provided that where any rule of law or any Act limits the particulars of an offence which are required to be given in a charge or information, nothing in this paragraph shall require more particulars to be given than those so required;

iv. the forms set out in the Second Schedule or forms conforming thereto as nearly as may be shall be used in cases to which they are applicable; and in other cases forms to the same effect or conforming thereto as nearly as may be shall be used, the statement of offence and the particulars of offence being varied according to the circumstances of each case;

v. where a charge or information contains more than one count, the counts shall be numbered consecutively;

b.

i. Provisions as to statutory offences.—where an enactment constituting an offence states the offence to be the doing of or the omission to do any one of any different acts in the alternative, or the doing of or the omission to do any act in any one of any different capacities, or with any one of different intentions, or states any part of the offence in the alternative, the acts, omissions, capacities or intentions, or other matters stated in the alternative in the enactment, may be stated in the alternative in the count charging the offence;

ii it shall not be necessary, in a count charging an offence constituted by an enactment, to negative any exception or exemption from, or qualifications to, the operation of the enactment creating the offence;

c.

i Description of property. —the description of property in a charge or information shall be in ordinary language, and shall indicate with reasonable clearness the property referred to, and, if the property is so described, it shall not be necessary [except when required for the purpose of describing an offence depending on any special ownership of property or special value of property] to name the person to whom the property belongs or the value of the property;

ii where the property is vested in more than one person, and the owners of the property are referred to in a charge or information, it shall be sufficient to describe the property as owned by one of those persons by name with the others, and, if the persons

owning the property are a body of persons with a collective name, such as a joint stock company or "Inhabitants", "Trustees", "Commissioners" or "Club" or other similar name, it shall be sufficient to use the collective name without naming any individual;

iii property belonging to or provided for the use of a public establishment, service or department may be described as the property of the Government, the Nairobi Area or a region as the case may be;

iv coin, bank notes and currency notes may be described as money; and an allegation as to money, so far as regards the description of the property, shall be sustained by proof of an amount of coin or of any bank or currency note [although the particular species of coin of which the amount was composed or the particular nature of the bank or currency note is not proved]; and, in cases of stealing and defrauding by false pretences, by proof that the accused person dishonestly appropriated or obtained any coin or any bank or currency note, or any portion of the value thereof, although the coin or bank or currency note may have been delivered to him in order that some part of the value thereof should be returned to the party delivering it or to another person and that part has been returned accordingly;

d. Description of persons.—the description or designation in a charge or information of the accused person, or of another person to whom reference is made therein, shall be reasonably sufficient to identify him, without necessarily stating his correct name, or his abode, style, degree or occupation; and if, owing to the name of the person not being known, or for any other reason, it is impracticable to give such a description or designation, a description or designation shall be given as is reasonably practicable in the circumstances, or the person may be described as "a person unknown";

e Description of document.—where it is necessary to refer to a document or instrument in a charge or information, it shall be sufficient to describe it by any name or designation by which it is usually known, or by the purport thereof, without setting out a copy thereof; [f] General rule as to description.—subject to any other provisions of this section, it shall be sufficient to describe a place, time, thing, matter, act or omission to which it is necessary to refer in a charge or information in ordinary language so as to indicate with reasonable clearness the place, time, thing, matter, act or omission referred to;

g Statement of intent.—it shall not be necessary, in stating an intent to defraud, deceive or injure, to state an intent to defraud, deceive or injure a particular person, where the enactment creating the offence does not make an intent to defraud, deceive or injure a particular person an essential ingredient of the offence;

h Mode of charging previous convictions.—where a previous conviction of an offence is charged in a charge or information, it shall be charged at the end of

the charge or information by means of a statement that the accused person has been previously convicted of that offence at a certain time and place without stating the particulars of the offence;

i Use of figures and abbreviations.—figures and abbreviations may be used for expressing anything which is commonly expressed thereby;

j Gross sum may be specified in certain cases of stealing.—when a person is charged with an offence under section 280, 281, 282 or 283 of the *Penal Code* [Cap 63], it shall be sufficient to specify the gross amount of property in respect of which the offence is alleged to have been committed and the dates between which the offence is alleged to have been committed without specifying particular times or exact dates."

25. It is trite that offences may be charged together in the same charge or information of the offences charged are founded on the same facts or form or are part of a series of the same or similar character. Section 135 of *Criminal Procedure Code* provides as follows:

" 1 Any offences, whether felonies or misdemeanours, may be charged together in the same charge or information if the offences charged are founded on the same facts, or form or are part of a series of offences of the same or a similar character.

2 Where more than one offence is charged in a charge or information, a description of each offence so charged shall be set out in a separate paragraph of the charge or information called a count."

In framing a charge, what is essential ws considered in the case of Ligilam v Republic [2004] [2] KLR where it was held that the principle of the law governing charge sheets is that an accused person should be charged with an offence known in law. The offence should be disclosed and started in a clear and unambiguous manner so that the accused may be able to plead to specific charge that he can understand. It will also enable the accused to prepare his defence."

26. The court of Appeal while dealing with the question whether a charge is fatally defective stated as follows:

" The test whether a charge is fatally defective is a substantive one...

If a defective charge is followed by a series of other procedural or substantive mistakes and which in particular affect the rights of the accused person, or the defect goes into the zoo of the charge distorting it in a way that accused person cannot understand the charge then the court ought to reluctantly apply Section 382 Civil Procedure Code to cure the defect."

27. Article 50[2] [b] guarantees the right of an accused person to be informed of the charge with sufficient details to answer it. It provides:

" Every accused person has the right to a fair trial, which includes the right –

b. To be informed of the charge with sufficient detail to answer it."

28. The charge must therefore be clear and have sufficient details that will enable an accused person to understand it and to answer it. The appellant was charged with the offence of robbery with violence

contrary to Section 296 [2] of the *Penal Code*. The particulars are that on the night of 18th and 19th October at about 2.00am at Mwitika Market Mulilu S/County Kitui County, jointly with others at large, being armed with offensive weapons namely a panga, a homemade spear and a rungu, robbed Muthami Nzaka of assorted shop goods that included sugar, salt, master cigarettes, [a box] an ATM car, ID Card and cash Kshs. 10,000/= in coin form all valued at Kshs. 31,550/- the property of Mumo Luvdo and at or immediately before or after the time of such robbery used actual violence against the said Muthami Nzaka.

29. In the case of Oluoch v Republic [1985] KLR cited by the respondent, it was held that:

> " Robbery with violence is committed in any of the following circumstances:
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> a. The offender is armed with any dangerous and offensive weapon or instrument; or
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> b. The offender is in company with one or more person or persons; or
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> c. At or immediately before or immediately after the time of the Robbery the offender wounds, beats, strikes or uses other personal violence to any person."

30. The elements are distinctive in nature and the prosecution needs to prove only one. See Juma Mohamed Ganzi & 3 Others v Republic Appeal No. 275/2002. The charge sheet as drawn discloses the element of the charge. Section 296[2] of the *Penal Code* 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 if, at or immediately after the time of the robbery, the wounds, beats, strikes or else's any other personal violence to any person, he shall be sentenced to death."

31. The evidence adduced by PW1 Muthomi Nzaka who is named in the particulars of the charge as the complainant testified that the accused grabbed him and another joined him. They overpowered him and took to another place where he found another man who had been kidnapped. They were taken to a valley where they were abandoned. The Pw1 stated that the attackers were three in number. They demanded his phone but he said he had no phone. That is when he was attacked by the appellant who entered the compound where the shop was situated. The appellant slapped him. According to PW1 the appellant was armed with something like a spear. One of the attackers was armed with a panga and he hit PW1 using the panga. He was taken to a valley where he was abandoned with others. They were tied. They managed to untie themselves and when he went to the shop and found it was broken into and items stolen.

32. The offence disclosed is robbery with violence because the appellant was in company of one or two person, they struck the complainant [PW1] using a panga. This happened immediately before committing the robbery. The appellant broke into the shop and stole. So, the attack on the complainant immediately before the braking into the shop and stealing was in furtherance of commission of the robbery. The attacked on PW1 was to overcome resistance which PW1 could have but and to facilitate the theft or to rob. The section states violence may be committed at two stages, firstly, immediately before which is overcome resistance, secondly, to facilitate retention of the items stolen.

33. The appellant was wounded. A P3 form produced shows that the PW1 sustained injuries which were bodily harm, page 78 of he record. The testimony of Pw1 was corroborated by the PW2 & 3. The

circumstances and the facts surrounding the attack show that the attack whereby Pw1 was wounded was to facilitate the robbery.

34. I find that the charge disclosed the offence and the particulars show that the appellant and his mates struck and wounded the complainant immediately before or immediately after robbing the complainant. All the ingredients of the offence were proved to the required standard beyond any reasonable doubts. The contention that the facts disclose the offence of shop braking is a sham. The elements of the offence of robbery with violence were proved. I need not belabor the point as the circumstances as disclosed by witnesses show that the intention of the appellant was to rob.

35. The appellant did not challenge the fact of identification at the scene. The prosecution case is that PW1 identified the appellant as one of the attackers. The PW1 testified that he identified the appellant with the help of a light bulb. This testimony was not shaken during cross-examination. The appellant was not known to the complainant and it was therefore not possible for him to mention his name. the appellant was identified by PW3 who knew his before and gave his name to the police. Upon arrest of the appellant an identification parade was concluded by Pw5 who testified that the appellant was identified by the three witnesses.

36. There is also the evidence of PW8 who testified that the appellant went to the police station and took the police to his house. The appellant produced the items he had stolen and an inventory was recorded. The complainant took the receipts for the items and proved that he had brought them. the offence was committed on 19/10/2027 and the appellant went to the police station on 4/11/2016. PW7 testified that the appellant led them to recover the stolen properties and crude weapon, a spear, a panga and an axe. The stolen items were 14 packets of cigarettes, a rope and the padlock that was stolen from the shop.

37. I find no reason to doubt the evidence of PW7. The appellant in his defence admitted that he went to the police station on his own and DW1 testified the accused was arrested on allegation that he was one of those who stole. I find that the possession of the goods was much later after the offence was committed. The case of Isaac Ng'ang'a Kahiga alias Peter Ng'ang'a Kahiga v Republic, Court of Appeal Nyeri Cr. Appeal No. 272/2005. The court stated as follows with regard to the doctrine of recent possession:

> " it is trite that before a court of law can rely on the doctrine of recent possession as a basis for conviction in a criminal case, the possession must be positively proved. In other words, there must be positive proof, first: that the property was found with a suspect, secondly that the property is positively the property of the complainant; thirdly, that the property was stolen from the complainant and lastly, that the property was recently stolen from the complainant."

38. The court of Appeal at Malindi in William Oongo Arunda [Hihento referred to as Patrick Oduor Ochieng] v R [Criminal Appeal No. 49/2020 [2022] KECA 23 [KLR] [21 January 2022] Judgment, address the question whether the doctrine of recent possession as properly invoked and stated as follows and stated,

> " As regards the circumstances under which the doctrine of recent possession may apply, in Athumani Salim Athumani v Republic [2016] eKLR this court held:
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> "The essence of the doctrine is that when an accused person is found in possession of recently stolen property and is unable to offer any reasonable explanation how he came to be in possession of that property, a presumption of fact arises that he is either the thief or

receiver. [See Malingi v Republic [1989] KLR 225, HC and Hassan v Republic [2005] e KLR 151]. The circumstances under which the doctrine will apply were considered in Issac Ng'ang'a Kahiga v Republic 272 of 2005 Supra. In the case the stolen items were recovered within hours of their being stolen and the appellants pleaded that they did not know that the properties were stolen. The court held that the evidence of recent possession corroborated the evidence of identification of the appellant and his co-accused... and there was no merit in the complaint that the trial court improperly invoked the doctrine of recent possession."

39. The prosecution proved that the appellant possessed stolen goods and the fact of possession was corroborated by the fact that the appellant was identified by witnesses as one of the robbers. The doctrine of recent possession was properly invoked to prove that he was the thief or the receiver of the goods.

40. I now consider the ground that the trial court erred and misdirected himself in fats and law by failing to notice that the assaults formed the single series of assault that happened or occasioned during the robbery and not separate or isolated incident. He relies on Section 6 of the Eviction Act which provides as follows:

> " Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction are relevant whether they occurred at the same time and place or at different times and places."

41. On count 2 – the appellant was charged with assault causing actual bodily harm contrary to Section 251 of the *Penal Code*. Particulars are that on 19/10/2016 at about 2.00am at Mwitika market, Mutitu Sub-county, Kitui County, jointly with others not before court the unlawfully assaulted Makuru Maithia thereby occasioning him actual bodily harm. The complainants in the charges of assault are PW2 & PW3 respectively. PW2 was a watchman for Kinyuve Mutia while PW3 as guarding the shop of Monica. The PW2 & 3 were not at the same place with the complainant [PW1]. The offence did not take place at the time same time the robbery took place.

42. Pw2 testified that he was attached by thieves when guarding the shop of his employer. The appellant was not charged with robbing Pw2 & PW3. The offences were committed during the incident but the offence that was disclosed was assault as opposed to robbery with violence. The prosecution called Pw4 who produced the PW3 forms for PW2 & 3 showing that they sustained injuries which were classified as harm.

43. Section 135[1] *Criminal Procedure Code* joinder of courts provides that offense may be charged together in the same charge or information if the offences charged are founded on the same facts or are part of a series of offences of the same or similar character. This means that the accused may be charged with more than one offence and the offences may be joined if they not arise from the same acts or form part of the same transaction so long as there is sufficient nexus [connection] between them. sufficient nexus exists if he offence of one offence is admissible in the trial of the other or where two or more offences exhibit such similar features that they could conveniently be tried together in the interest of justice.

44. The offences herein arose from the same transaction but different offences were disclosed against the appellant. In Evans Kalo v R 92014] eKLR where the appellant was charged with three counts of robbery with violence contrary to Section 296[2] of the *Penal Code* and two counts of unlawful possession of a firearm and ammunitions which were used during the robbery, the court of Appeal held that here was sufficient nexus between a charge of robbery with violence and a charge of possession of firearm and ammunition without a firearm certificate to try the offences together.

45. In this case there was a nexus between the chare of robbery with violence and the assault. The assaults form one part of a continuous transaction and were properly preferred against the appellants.

Conclusion

46. For the reasons stated above, I find that this Appeal is without merits and is dismissed.

DATED, SIGNED AND DELIVERED AT KITUI THIS 25TH DAY OF JUNE 2025

HON. LADY JUSTICE L. GITARI

JUDGE