



REPUBLIC OF KENYA



**KENYA LAW**  
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**Waithaka v Republic (Criminal Appeal E016 of 2025)  
[2025] KEHC 11321 (KLR) (31 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11321 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
CRIMINAL APPEAL E016 OF 2025**

**DR KAVEDZA, J  
JULY 31, 2025**

**BETWEEN**

**PETER MACHARIA WAITHAKA ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal against the original conviction and sentence delivered on  
30th January 2025 by Hon. Kabuya I.M (SPM) at Kibera Chief Magistrate's  
Court Criminal Case no. E2121 of 2022 Republic vs Peter Macharia Waithaka)*

**JUDGMENT**

1. The appellant was charged and after a full trial convicted of the offence of robbery with violence contrary to section 296(2) of the *Penal Code*. The particulars are that the appellant on the 15<sup>th</sup> day of October 2022 along Menelik Ngong Road Junction in Kilimani area within Nairobi County jointly with others not before the court, while armed with a dangerous weapon namely a pistol robbed one Angelos Tselikas of his bag with items of unknown value and at the time of robbery used actual violence which fatally injured the said Angelos Tselikas. He was thereafter sentenced to thirty-five (35) years imprisonment.
2. Being aggrieved, he filed the present appeal challenging the totality of the prosecution evidence against which he was convicted, which he claimed was contradictory. In his petition of appeal, he further contended that the learned magistrate disregarded his plausible defence.
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 called ten witnesses in support of their case. PW1, Michael Masinde, stated that on the material day while walking along the road, he saw three men on a motorbike accost a white lady. One of the men shot her while the appellant, whom he identified by his brown khaki trousers and a distinct facial scar, snatched her handbag before then fled. PW4, Sammy Amwoyo, confirmed having witnessed the incident. PW3, Leakey Ojiambo, assisted in taking the injured woman to Nairobi Women's Hospital, where she succumbed to her injuries. Statements were subsequently recorded at Capitol Hill Police Station.
5. An identification parade was later conducted by PW2, Inspector Hezron Kimtai, in which PW1 took part. He produced in evidence the identification parade form dated 15th December 2022.
6. PW5, Dr Simon Omok, presented a post-mortem report of the deceased. PW6, Hillary Omondi, facilitated the repatriation of the body to Greece.
7. PW7, Chief Inspector Jacob Ndunda, testified that upon assignment of the case, he visited the scene in the company of fellow officers and recovered a spent cartridge and bullet casing, together with CCTV footage which PW9, Police Constable Wakaba, transferred onto a CD. Following these leads, the rider of the motorbike alleged to have ferried the assailants was apprehended. A subsequent search of his residence yielded items suspected to have been stolen. The appellant, who was reportedly notorious among locals, was later arrested.
8. PW8, Chief Inspector Kiptum, a firearms examiner, confirmed receipt of the cartridge case and accompanying memo for analysis. He concluded that the cartridge was suitable for use in pistols, thereby classifying it as ammunition. He produced the exhibit memo, the ballistic report, and the recovered cartridge in court.
9. PW10, Corporal Clement Muthoka, the investigating officer, testified that he was informed of the incident by his superior and immediately proceeded to the scene with colleagues. Upon learning that the victim had been taken to Nairobi Women's Hospital, they proceeded there and recovered a key which led them to an apartment on WoodVale Avenue, where they found and seized the appellant's passport, which he produced in court.
10. At the close of the prosecution's case, the trial court found that a prima facie case had been established, warranting the appellant to be put on his defence. The appellant claimed that at the time of the alleged offence he was admitted at Uzima Uhai Hospital from 12th to 16th October 2022 and produced supporting medical documents from Alphe Medica Lab and Uzima Uhai Health Centre. He attributed the charges to a grudge with an officer from Kibera Police Station. DW2, Sammy Kiptoo, corroborated the appellant's claim, stating that he had rushed him to the hospital and later learnt of his arrest two weeks after discharge on 16th October 2022.
11. The appellant was convicted of the offence of robbery with violence.
12. The appeal was canvassed by way of written submissions which have been duly considered and there is no need to rehash them. The key ingredients for the offence of 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”.



13. These elements, must be established beyond reasonable doubt. The first element is the use or threat of violence during the robbery. In this matter, the attack on the deceased was directly witnessed by PW1 and PW4, both of whom confirmed that the appellant, together with an accomplice, accosted the deceased and that one of the assailants fired a pistol, inflicting fatal injuries. This account was further supported by CCTV footage adduced by PW9, PC Wakaba. The post-mortem report produced by PW5, Dr Simon Omok, confirmed that the deceased died as a result of the gunshot wound, clearly demonstrating that actual violence was inflicted during the robbery.
14. The second element is the theft of property during or immediately after the use of violence. PW1 testified that the appellant, identified by his distinct facial scar and brown khaki trousers, snatched the deceased's handbag after she had been shot. This act of taking the handbag immediately after the shooting confirms that the theft was committed simultaneously with the violence, thereby satisfying this element of the offence.
15. The third element is the identification of the appellant as a participant in the robbery. PW1 identified the appellant in an identification parade conducted by PW2, Inspector Hezron Kimtai. The appellant's identity was further corroborated by the testimony of PW10, the investigating officer, who confirmed that the appellant was arrested following information from locals familiar with his notoriety. The evidence linking the appellant to the scene, including the CCTV footage and recovered items, firmly places him at the centre of the offence.
16. The appellant's alibi defence was duly considered but found to be implausible. The records reveal inconsistencies, notably that the hospital he claimed to be admitted in had no branch in Kibera as alleged, and the purported doctor does not exist. The trial court rightly rejected this defence, and no contrary evidence has been tendered to displace that finding.
17. The upshot of the analysis above is that the appellant's conviction was proper and is upheld.
18. The appellant was sentenced to thirty-five years' imprisonment. The trial court took into account his mitigation, time spent in custody, and his status as a first offender. There is no basis to disturb the sentence. However, the sentence imposed shall run from the date of arrest, 11th December 2022, as he remained in remand throughout the trial pursuant to section 333(2) of the [Criminal Procedure Code](#).
19. In the premises, the appeal is without merit and is dismissed in its entirety.

Orders accordingly.

**JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 31<sup>ST</sup> DAY OF JULY 2025**

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**D. KAVEDZA**

**JUDGE**

In the presence of:

Mr. Wainaina h/b for Wanduyi for the Appellant

Appellant Present

Timoi for the Respondent

Karimi Court Assistant.

