



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mzee v Republic (Criminal Appeal E025 of 2022)  
[2024] KEHC 643 (KLR) (25 January 2024) (Judgment)**

Neutral citation: [2024] KEHC 643 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
CRIMINAL APPEAL E025 OF 2022  
KW KIARIE, J  
JANUARY 25, 2024**

**BETWEEN**

**RAMADHAN JUMA MZEE ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(From the original conviction and sentence in Criminal case NO.594 of 2020 of the Chief Magistrate's Court at Mombasa by Hon. R.M. Amwayi– Senior Resident Magistrate)*

**JUDGMENT**

1. Ramadhan Juma was convicted on three counts. In count one, he was convicted of the offence of robbery with violence contrary to section 295 as read with section 296 (2) of the [Penal Code](#); in count two, he was convicted of the offence of resisting lawful arrest contrary to section 253 (b) of the [Penal Code](#) while in count three he was convicted of the offence of malicious damage to property contrary to section 339 (1) of the [Penal Code](#).
2. The particulars of the offences are that on the 19<sup>th</sup> day of April 2020, Dimbwini area, Likoni sub-county within Mombasa County, while armed with a knife and a club, robbed Vitalima Nyiva Mwanyumba of her mobile phone valued at Kshs 8,000/=and immediately before the time of the said robbery, used actual violence to the said Vitalima Nyiva Mwanyumba. On the same day, he wilfully and unlawfully damaged one LG mobile phone, five plastic buckets, one charcoal stove, and three basins, all valued at Kshs 4,700/= the property of Norah Taru Jeremiah. When police officers went to arrest him, he resisted.
3. The appellant was sentenced to serve twenty years imprisonment in count one, two years imprisonment in count two, and two years imprisonment in count three. The sentences were ordered to run concurrently. He was aggrieved and appealed against the convictions and the sentences. He raised grounds of appeal as follows:



- a. That the learned trial magistrate erred in law and fact by convicting the appellant without considering that identification is an essential element of robbery was not proved beyond a reasonable doubt.
  - b. That the learned trial magistrate erred in law and fact by convicting the appellant without considering that he was denied a right to a fair trial pursuant to Article 50(2)(p) of the Constitution.
  - c. That the learned trial magistrate erred in law and fact by sentencing the appellant to 20 years imprisonment without considering that the sentence meted was harsh and excessive.
  - d. That the learned trial magistrate erred in law and fact by convicting the appellant without considering his defence.
4. The state opposed the appeal through Ms. Maureen Anyumba learned counsel, who contended that the appeal lacked merit.
  5. This is a first appellate court. As expected, I have analyzed and evaluated afresh all the evidence adduced before the lower court. I have drawn my conclusions, considering that I neither saw nor heard any of the witnesses. I will be guided by the celebrated case of *Okeno v Republic* [1972] EA 32.
  6. Norah Talo (or is she Taro?) Jeremiah (PW1) testified that after she heard a loud bang at her door, she switched on the lights. She saw the appellant, whom she referred to as Rama, in the house while armed with a knife and a club. He then hit her on the shoulder with the club and attempted to stab her sister, who was with her. They then escaped to the neighbour's houses. When she realised her sister was not with her, she returned. She found the appellant lying on her in an attempt to rape her. The appellant hit her with the club, and the duo sought refuge in their neighbour's house. The appellant went back to her house and damaged her items. She further said that the appellant stole her sister's phone but did not say at what stage of the incident.
  7. The evidence of her sister, Vitalima Nyiva Mwanyumba, was contradictory. She said the appellant demanded that she give him her phone. When she resisted, he cut her in the palm with the knife. She called for help and ran away. The appellant followed them into a neighbour's house and threatened to rape her. The appellant returned to her sister's house and damaged some items therein. His wife called and cooled him down. This again contradicted her sister, who testified that the appellant was staying alone. It is worth noting that apart from saying that the appellant stole her phone, she did not testify about how he did it.
  8. The evidence of Cpl Lewa Mwatela (PW4), on the arrest of the appellant, was hearsay. He testified that when the police entered his house on 20<sup>th</sup> April 2020, they found him armed with a knife and a club. He was not present. He also contradicted PW1, who testified that when police officers went to arrest the appellant, he went out while armed with a knife.
  9. The evidence of PC Ngetich (PW3) was that when they went to arrest the accused, he refused to open it when they knocked at the door. He did not testify whether they identified themselves adequately.
  10. From the foregoing analysis of the evidence, it would appear the appellant was amok for whatever reason, but this was not a robbery case. The evidence on record does not support robbery and resisting arrest offences. I accordingly quash the convictions in counts one and two. I set aside the sentences therein. The offence in the third count was proved to the required standards.



11. Section 333 (2) of the *Criminal Procedure Code* provides:

Subject to the provisions of section 38 of the *Penal Code* (Cap. 63) every sentence shall be deemed to commence from, and to include the whole of the day of, the date on which it was pronounced, except where otherwise provided in this Code.

Provided that where the person sentenced under subsection (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody.

12. The learned trial magistrate should have ordered the sentence to run on April 20<sup>th</sup>, 2020, when he was arrested, but he did not. I order that the sentence meted out in count three by the learned trial magistrate run from April 20<sup>th</sup>, 2020.

**DELIVERED AND SIGNED AT MOMBASA THIS 25<sup>TH</sup> DAY OF JANUARY, 2024**

**KIARIE WAWERU KIARIE**

**JUDGE**

