



**Cheruiyot & 2 others v Republic (Criminal Appeal E013 of 2022)  
[2024] KEHC 1917 (KLR) (29 February 2024) (Judgment)**

Neutral citation: [2024] KEHC 1917 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
CRIMINAL APPEAL E013 OF 2022  
JR KARANJA, J  
FEBRUARY 29, 2024**

**BETWEEN**

**CLEMENT CHERUIYOT ..... 1<sup>ST</sup> APPELLANT**

**VINCENT KIPKORIR ..... 2<sup>ND</sup> APPELLANT**

**ALFRED KIPROTICH ..... 3<sup>RD</sup> APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**JUDGMENT**

1. The appellant, Clement Cheruiyot, Vincent Kipkorir and Alfred Kiprotich appeared before the Chief Magistrate at Kericho charged with two counts of Robbery with violence contrary to Section 295 as read with Section 296 (2) of the Penal Code. In addition, the first appellant (Clement) was charged with a third count of rape, contrary to Section 3 (1) (a) (3) of the Sexual Offences Act and a fourth count of gang rape, contrary to Section 10 of the Sexual Offences Act.
2. The third appellant (Alfred) and the second appellant (Vincent) faced additional counts of gang rape, contrary to section 10 of the Sexual Offences Act (i.e counts five (v) and six (vii).

It was alleged in the first and second counts that on the 26<sup>th</sup> July 2018 at [particulars withheld] village in Kabianga Belgut within Kericho Count, the appellants jointly with another not before court while armed with dangerous weapons namely steel cutters and torches robbed LAA of her cash Kshs.600/= and a mobile phone as well as Prudence Jael Onyapidi of her cash Kshs.1,700 and immediately before and after such robbery used actual violence on the two complainants.

3. In count three, the first appellant was alleged to have had carnal knowledge of Prudence Jael Onyapindi without her consent and in counts four, five and six; the three appellants were alleged to have gang



raped LAA on the material date and place. After pleading not guilty, the three appellants were tried and convicted on counts one and two.

The first, second and third appellants were in addition convicted on counts four, five and six.

4. The trial court imposed a sentence of thirty (30) years imprisonment on counts one and two and twenty (20) years imprisonment on counts four, five and six to run concurrently.

Being dissatisfied with the convictions and sentences, the second appellant (Vincent) preferred the present appeal on grounds set out in the Petition of appeal filed herein on 19<sup>th</sup> April 2022 in which he complains of having been convicted on evidence which was uncorroborated and insufficient and that the sentence meted against him was excessive.

5. At the hearing of the appeal by way of written submissions, the second appellant was apparently joined by the first and third appellants whose petitioners of appeal are not in this record but could be in separate files which appear to have been consolidated with this file thereby implying that this is a consolidated appeal anchored on the original appeal by the second appellant. As it were, the first and third appellants rode on the back of the second appellant.

6. Be as it may, the duty of this court was to reconsider the evidence availed at the trial and draw its own conclusions bearing in mind that the trial court had the advantage of seeing and hearing the witnesses. This is a legal principle which was laid down in the case of *Okeno v Republic* (1972)EA 32.

7. In summary, the prosecution case was that on the material date the two complainants LAA (PW1) and OJP ((PW6), both students at [Particulars withheld] University main campus arrived at the campus from a collage trip in Mombasa. They were among a group of students who had gone for the trip including their college mates, KK ((PW2) and GOM((PW3) and on their arrival they were dropped by their bus driver, JT((PW4) at spots which were near their respective hostels.

8. After being dropped, the two complainants walked towards their hostel when they met a group of people ahead of them. These were strangers to them and were flashing torches. The strangers confronted and attacked the complainants before they took away their money and mobile phone. Thereafter, the first complainant ((PW1) was taken to a nearby bush and gang raped by some of the strangers while one stranger raped the second complainant ((PW6).

9. After the entire ordeal, the two complainants met their two collage mates ((PW2 and (PW3) and notified them of what had befallen them.

Later, Sgt Julius Koros ((PW5), based at Sondu arrested the first appellant/accused after he had been apprehended by a chief.

IP Edward Wanyama ((PW7), was at the time based in Belgut. He carried out an identification parade involving the first appellant as well as the second and third appellant/accused who were also arrested as suspects.

10. In the parade, the first appellant and third appellant were identified by the second complainant ((PW6) while the second appellant/accused was identified by the first complainant. ((PW1) who also identified the first appellant.

Richard Mutai Langat ((PW8), a government analyst based in Kericho obtained DNA samples from the three appellants and matched them against the DNA samples obtained from the two complainants. Thereafter, he prepared and signed the necessary report (P.EX11) indicating that the first complainant's DNA profile matched the DNA profiles of the three appellants.



11. A Clinical officer based at the Kericho county referral hospital, Robert Kipyegon Langat ((PW10), examined the two complainants and prepared the necessary P3 forms (P.EX5 and P.EX6) indicating that the two had been sexually assaulted.

The matter was investigated by Cpl. George Makau Martha ((PW9), who was then based at the DCI Belgut. Thereafter, he preferred the present charges against the appellants.

12. The defence case was in general a denial of the three appellant's involvement in the offences.

The first appellant indicated that he was at the material time picking tea when a lady tea picker disagreed with him and reported the matter to the chief. He was later taken to Kabianga AP post after being told to produce a TV set and a motor bike. At the post, he was asked for the 15,000/= which he did not have. He was later taken to an identification parade before being taken to Kericho police station and charged.

13. The second appellant indicated that he was at home herding cattle at the material time. Thereafter, he proceeded to a barber shop and then to buy nails. In the process, he was told that he was required at the chief's office. He went there and he was informed that he had robbed a Kisii lady. He was then taken to Sosiot police station and later to an identification parade.

The third appellant indicated that he was told that the chief was looking for him. He went to the chief where a lady accused him of having invaded her. He was beaten up by administration police officers and asked for Kshs.15,000/= before being taken to Sosiot police station and later to an identification parade.

14. The appellants in essence indicated that they were implicated with the offences due to existing grudges with third parties or their failure to part with money demanded from them by police officers.

The trial court after considering the evidence in its totality concluded that the charges save for count three involving the first appellant were proved beyond reasonable doubt against the appellants.

15. This court from its own consideration of the evidence opines that there was no dispute with regard to the occurrence of the offences. Indeed, the two complainants ((PW1 and (PW6) provided credible evidence proving that they were indeed violently robbed of their respective property by a group of people numbering three or more. The also established that other than being robbed they were also raped.

The medical evidence by the clinical officer ((PW 10) confirmed that the two complainants suffered bodily injuries and were indeed sexually assaulted on the material date and time.

16. Basically, on the face of the appellant's denial of involvement in the offences the alleged identification of the appellants as the offenders was the crucial issue that presented itself for determination by the trial court.

In that regard, the trial court found that the concurrent offences occurred in the hours of darkness but even then, the existence of sufficient lights at the scene provided favourable conditions for visual identification of the offenders by the complainants which identification was confirmed and corroborated by the identification parades conducted by IP. Wanyama ((PW 7) and the evidence of the government chemist ((PW 8) which showed that the DNA profiles of the appellants in as much as they marched with the DNA profiles of the complainants did clearly place them at the scene of the offence.

17. The trial court therefore found that on the basis of the prosecutions credible factual evidence and the principles laid down in the cited authorities of the superior courts being *Abdalla Wendo V. Republic* (1953)20 EACA 166, and *Republic v Samwel Kariuki Mwangi* (2019)eKLR, *inter alia*, the



complainants were able to positively identify the appellants as the persons who offended them on that material date and time.

18. This court cannot agree more as it does not see any factual or legal reason to interfere with that finding of the trial court. The appellant's conviction by the trial court was therefore lawful, safe and sound. It is hereby affirmed and upheld.
19. As regard the sentences, all were lawful but rather excessive in this court's opinion for reasons that the appellants were first offenders and going by their respective mitigating factors they were remorseful. Notably, they are young people and in particular, the second and third appellants were college and high school students at the material time of the offences.
20. It may also be noted that recent jurisprudence coming from the superior courts with regard to mandatory minimum sentences is skewed towards doing away with such sentences in as much as they encumber a court's discretion in sentencing.

This appeal is therefore allowed in terms of reducing the sentences for counts one and two to twelve (12) years imprisonment each and for counts four, five and six to eight (8) years imprisonment each from the date of the previous sentences i.e 14<sup>th</sup> April 2022. The terms shall run concurrently.

21. In the event that any of the appellants was in continuous custody from the date of arrest to the date of the original sentence, the period served be taken into account in computation of the sentence. Ultimately, the appeal succeeds on sentence only.

Ordered accordingly.

**DATED AND DELIVERED THIS 29<sup>TH</sup> DAY OF FEBRUARY, 2024.**

**J. R KARANJAH**

.....

**JUDGE**

I certify that this is a true copy of the original

Signed

**DEPUTY REGISTRAR**

