

KENYA / JUDGMENT

Keiser v Republic [2026] KEHC 9220 (KLR)

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COURT

High Court

BEFORE

DR Kavedza

CASE / FILE NUMBER

Criminal Appeal E013 of 2026

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Keiser v Republic (Criminal Appeal E013 of 2026) [2026] KEHC 9220 (KLR) (30 June 2026)
(Judgment)

Neutral citation:

[2026] KEHC 9220 (KLR)

Republic of Kenya

In the High Court at Kibera

Criminal Appeal E013 of 2026

DR Kavedza, J

June 30, 2026

Between

Samuel Bonface Keiser

Appellant

and

Republic

Respondent

(Being an appeal against the original conviction and sentence delivered by Hon. Kahuya I.M (SPM) on 29th January 2026 at Kibera Chief Magistrate's Court Sexual Offences case no. E620 of 2020 Republic vs Samuel Bonface Keise)

Judgment

1.The Appellant was charged with and, after a full trial, convicted of robbery with violence contrary to section 296(2) of the Penal Code on Count I and rape contrary to section 3(1)(a)(c)(3) of the Sexual Offences Act on Count II. He was sentenced to thirty years' imprisonment on Count I and twenty years' imprisonment on Count II to run concurrently.

2.Aggrieved by the conviction and sentence, the Appellant filed this appeal. In his petition of appeal, he challenged the totality of the prosecution evidence and contended that the sentence imposed was unlawful. He urged the court to quash the conviction and set aside the sentence.

3.This being a first appeal, this Court is under a duty to reconsider, re-evaluate and re-analyse the evidence afresh and draw its own independent conclusions, while bearing in mind that it neither saw nor heard the witnesses testify. (See:Okeno v Republic [1972] EA 32.)

4.The prosecution's case was as follows: PW1, RAO, testified that on the material day her boyfriend escorted her to board a motorcycle with registration number KMGV xxxT ridden by the Appellant to travel to Kabiria. Instead of stopping at her destination, the Appellant accelerated despite her protests. Fearing for her safety, she jumped off the moving motorcycle and sustained injuries. The Appellant returned, picked her up while she was dizzy, and took her to a secluded area where he forcibly removed her clothing, assaulted her and had sexual intercourse with her without her consent. He then took her to another bush where he raped her again.

5.PW1 further testified that the Appellant compelled her to unlock her Nokia C22 mobile phone, transferred Kshs 2,500 from her M-Shwari account to his phone, stole Kshs 4,000 from her jacket, removed and destroyed her SIM card by eating it, and retained some of her clothing including her bra and pants. He abandoned her on the road at night.

6.When she sought help from passing motorists, he assaulted her again before throwing back part of her clothing and leaving. She remained on the roadside until officers from the Directorate of Criminal Investigations found her and took her to Mutuini Police Station. She was later admitted to Nairobi Hospital for treatment. After replacing her SIM card, she received information leading to the Appellant's arrest. An identification parade was conducted and she identified him.

7.PW2, AOE, testified that on the material day he escorted PW1 to board a motorcycle and flagged down the Appellant. The following day he received information about the incident and advised PW1 to report the matter to the police. The police traced the Appellant through the person who had the stolen phone.

8.PW3, Edwin Mamari, testified that on 29th February 2024 at about 11:30 p.m., while being transported home by the Appellant, the Appellant told him that he had encountered a lady who had been attacked and left her mobile phone behind. The Appellant admitted picking up the phone, removing its password, and that it no longer had a SIM card. He handed the phone to PW3. PW3 later contacted PW1 and informed her that he knew the person who had been in possession of her phone. He subsequently encountered the Appellant and took him to Mutuini

Police Station where the Appellant was arrested.

9.PW4, Dr John Njuguna, a clinical officer at Nairobi Women's Hospital, produced the medical documents of PW1. He testified that PW1 reported being raped by three men. She had torn and dirty clothes and bruises on her head. Genital examination revealed reddening of the vagina with severe pain consistent with penetration. She was treated with HIV prevention medicine, antibiotics and painkillers.

10.PW5, Inspector Kennedy Gitau, testified that he conducted the identification parade with eight persons. The Appellant agreed to the procedure and stood between the second and third persons. PW1 identified him by face and touch. The Appellant raised no objection and signed the form.

11.PW6, Joseph Ngasure Ngina, testified that he hired the Appellant the motorcycle with registration number KMGB xxxT for Kshs 300 daily. When the Appellant failed to pay for a month, he traced the motorcycle to the police station where the Appellant was charged.

12.PW7, PC Juma, the investigating officer at Mutuini Police Station, corroborated the evidence of PW1, PW2, PW3 and PW4. He testified that PW1 had visible scratch marks on her hands and a swollen face when she reported the matter. He arrested the Appellant.

13.PW8, DCI Mutai, testified that he issued a certificate for five photographs printed under his authority.

14.PW9, Corporal Limo, a data analyst from DCI at Safaricom, produced the M-Pesa statements for PW1 and the Appellant.

15.In his defence, the Appellant denied the allegations. He testified that he was arrested while coming from work and that the case arose because his name and number appeared as the recipient of Kshs 470. He maintained that the money was sent to his phone by mistake.

16.The appeal was canvassed by way of written submissions by the parties, which have been duly considered.

17.In count I, 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".

18.The first ingredient of the offence of robbery with violence is theft. PW1 testified that the Appellant robbed her of her Samsung A24 mobile phone. He forced her to provide the password to her M-Pesa account and transferred Kshs. 470 to his mobile phone. This element of theft was clearly established.

19.The second ingredient is the use or threat of violence at or immediately before or immediately after the theft. PW1 stated that the Appellant was armed with a machete and hit her on the right side of the rib with the weapon. This act of violence was directly linked to the theft. The medical evidence contained in the P3 Form and confirmed by PW3 revealed right flank tenderness consistent with blunt force trauma. This confirms the use of actual personal violence.

20.The third ingredient is that the offender was in company with one or more other persons. PW1 testified that the Appellant was in the company of another person who acted as a lookout during the robbery. This evidence was not disputed and establishes that the offence was committed in company with another person.

21.The final ingredient is the proper identification of the offender. PW1 positively identified the Appellant in court as the person who robbed her and sexually assaulted her. An identification parade was also conducted, further reinforcing the accuracy of her identification.

22.In the premises, the prosecution proved all the ingredients of the offence of robbery with violence beyond reasonable doubt. The conviction on Count One for the offence of robbery with violence was proper and is upheld. The appeal against the said conviction is dismissed.

23.The appellant was also charged with the offence of rape contrary to section 3 (1) (a) (b) as read with Section 3 (3) of the Sexual Offences Act No.3 of 2006.

23.The elements for rape are well settled in *Simon Kimiti v Republic* [2017] eKLR where it was stated thus;“Without corroboration the essential elements of rape consist of the following:(1)The act of intentional and unlawful penetration.(2)The act of sexual intercourse was done and against the complainant’s will.(3)The consent is obtained by force or by means of threats or intimidation.”

24.Section 2(1) of the Sexual Offences Act defines penetration as:“the partial or complete insertion of the genital organ of a person into the genital organs of another person.”

25.PW1 testified that the Appellant walked towards her, dragged her into a plantation, and threatened her with a panga to remove her pants before proceeding to rape her. She stated that a second man was on the lookout while the incident occurred. When she attempted to resist, the Appellant hit her on the rib with the panga. This testimony was corroborated by PW3, who confirmed that the history given by the complainant was consistent with penetration.

26.The Appellant challenged the medical evidence, arguing that no samples were taken to confirm the allegation of rape. PW3, however, maintained that the history provided was consistent with penetration, thereby supporting the complainant’s account.

27.In any event, even without more elaborate medical findings, this Court is entitled to make a finding of penetration based solely on the credible testimony of the victim. This is in line with the provisions of section 124 of the Evidence Act (Cap 80 of the Laws of Kenya), which provides that the testimony of a victim in sexual offence cases may be sufficient without corroboration, provided the court is satisfied that such evidence is truthful and reliable.

28. Although this Court did not have the opportunity of seeing the victim testify, her evidence has been carefully scrutinised. Her testimony was elaborate, detailed and remained consistent throughout, notwithstanding being subjected to cross-examination on two separate occasions by both the Appellant personally and his counsel.

29. The Appellant's defence consisted of a bare denial in which he claimed he was wrongly accused and not involved in the incident. Having considered the defence, the Court finds that it did not displace or raise any reasonable doubt in the clear, consistent and corroborated evidence adduced by the prosecution linking the Appellant to the offences.

30. The evidence, including the direct testimony of the victim, the medical evidence, and the surrounding circumstances, leaves no doubt that the complainant was subjected to a violent and premeditated robbery accompanied by sexual assault. The conviction on both counts is upheld.

31. The Appellant was sentenced to thirty years imprisonment in count I, and twenty years imprisonment count II to run concurrently. During sentencing, the court considered the pre-sentence report and the aggravating circumstances of the case, including the use of a weapon, the vulnerability of the victim, and the traumatic nature of the offences. The sentences imposed were lawful and proportionate. There is no justification for this Court to interfere with the sentence.

32. In the premises, the appeal is found to be lacking in merit and is dismissed. Orders accordingly

JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 30TH DAY OF JUNE 2026 ____ D.
KAVEDZAJUDGE In the presence of: Appellant Absent Ms. Otiya for the Respondent Karimi Court Assistant.

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