



IN THE HIGH COURT OF KENYA

AT KAKAMEGA

CORAM: D.S. MAJANJA J.

CRIMINAL APPEAL NO. 89 OF 2018

BETWEEN

FREDERICK MUKHOKHO.....APPELLANT

AND

REPUBLIC.....RESPONDENT

(Being an appeal from the original conviction and sentence of Hon. H. Wandere, PM

dated 14th June 2018 at Kakamega Magistrates Courtin Criminal Case No. 3960 of 2016)

JUDGMENT

1. The appellant, **FREDERICK MUKHOKHO**, was charged, convicted and sentenced to 15 years' imprisonment for the offence of robbery with violence contrary to **section 295(a)** as read with **296(2)** of the *Penal Code (Chapter 63 of the Laws of Kenya)*. The particulars were that on 21st October 2016 at Mukulusu village, Itenyi sub-location, Murhanda location in Kakamega East District within Kakamega County, being armed with a dangerous weapon namely panga robbed **MILLICENT ATOLWA** of six chicken valued at Kshs. 3,200/- and her Itel mobile phone valued at Kshs. 1,700/- all valued at Kshs. 4,900/-.

2. The prosecution relied on the testimony of a single witness to prove its case. Millicent Atolwa, PW 1, testified that on the night of 21st October 2016, as she was sleeping, she was woken up by assailants who were shining torches on her. One of the assailants slapped her with a panga and told her to keep quiet. There was another assailant with a touch. She testified that she was able to recognize that person. She pretended that she needed to go for a call of nature. The assailant allowed her to go and as she crouched, the assailant slapped her with a panga on the left side of the head causing her to scream. Several people came and she noticed her mobile phone and chicken had been stolen. She reported the incident to the police. On the next day again she was attacked and was advised to leave the village. During the day, she spotted the appellant and alerted her father that he had seen the person who attacked her with a panga. She stated that she knew that appellant as *Daudi* and that he was a neighbor and that on the material night he had stayed in the house for about an hour. In cross-examination she stated that she had recognized him as the other assailant had shone the torch at him and that the torch was bright enough for her to recognise him.

3. After the incident, PW 1 was treated at Shinyalu Health Centre. The P3 medical form was produced by a clinical officer, Migang'a Karanja (PW 3), who confirmed that PW 1 was treated at the institution on 24th October 2016 and the injury on her face was visible. The clinical officer who examined her stated that a blunt object was used and assessed the degree of injury as harm. The investigating officer, PC Dogo Hassan, PW 2 confirmed that the complainant reported the incident to the police and was able to recognize the appellant as *Daudi* using the torch light. He was thereafter arrested and charged.

4. In his unsworn statement, the appellant stated that his name was *Fredrick Daud Mukofo* and that the name was in his identity card was *Daudi Mukoko Ndali*. He denied that he committed the act and that he was arrested on 21st October 2016 by strangers who accused him of selling charcoal without a permit. They demanded money from him in order to release him on. Since he did not have money, he was arrested and later accused of robbery when he was at the police station.

5. The offence of robbery with violence under **section 296(2)** of the *Penal Code* is proved when an act of stealing is committed in any of the following circumstances, that is to say the offender was armed with a dangerous weapon or that he was in the company of one or more person or that at immediately before or immediately after the time of robbery beats, strikes or uses other personal violence to any person. In this case, the evidence of PW 1 is clear that she was robbed on that material night and assaulted in the cause of that robbery. Her chicken and mobile phone were stolen. The fact of the assault was confirmed by PW 3 who stated that she had been treated for the injury.

6. The singular issue in this appeal is whether the appellant was identified as the assailant. It is well established by our courts that the court must exercise caution and relying on the evidence of a single witness or identification of a stranger in circumstances that are difficult for identification. In ***Maitanyi v Republic [1986] KLR 98***, the Court of Appeal held that although it is trite law that a fact may be proved by the testimony of a single witness, this does not lessen the need for testing with the greatest care the evidence of a single witness respecting identification, especially when it is known that the conditions favouring positive identification were difficult.

7. In this case, the evidence of PW 1 was that she knew the appellant. This was therefore a case not of identification of a stranger, but of recognition of person known to PW 1. It is also accepted in law that evidence of recognition is stronger than that of identification because recognition of someone known to one is more reliable than identification of a stranger (see ***Anjononi & Others v Republic [1980] KLR 59***). PW 1 referred to the appellant *Daudi* and indeed the appellant in his defence stated that his name was *Daudi*. I am satisfied that the *Daudi*, PW 1 referred to was the appellant and the came from the same village as PW 1. PW 1 stated that she was able to recognize him when his accomplice shone the torch on his face and that he was the one in close proximity when he assaulted her with a panga. In his defence, the appellant did not say anything about where he was on the night the assault took place but only spoke of his arrest.

8. I find that the appellant was properly identified as the assailant and as such I affirm the conviction. As regards sentence, I do not find the sentence of 15 years' imprisonment harsh or excessive to warrant interference. I affirm the sentence.

9. The appeal dismissed.

SIGNED AT NAIROBI

D.S. MAJANJA

JUDGE

DATED AND DELIVERED AT KAKAMEGA THIS 26th day of SEPTEMBER 2019.

W. MUSYOKA

JUDGE

Appellant in person.

Ms Ombega, Prosecution Counsel, instructed by the Director of Public Prosecutions for the respondent.