



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUNGOMA
CRIMINAL APPEAL NO.103 OF 2015

BENARD NJOROGE WAIRIMU.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGEMENT

1. Before Court is an appeal arising from the judgement W.K. Chepseba S.P.M. (as he then was) in Webuye Criminal Case No.170 of 2014 where the appellant faced two counts. The 1st Count was attempted Robbery with violence contrary to Section 297(2) of the Penal Code and impersonating a Police Officer contrary to Section 95(1) (b) of the Penal Code.

2. The appellant was convicted of both Counts and was sentence to serve 6 and 2 years respectively. The sentences were to run concurrently.

3. Being aggrieved by the conviction and sentence he appealed to this Court citing several grounds as follows;

- The elements of the offence under Section 297 of the Penal Code were not proved.
- Evidence did not support the charge.
- The Prosecution Evidence was contradictory.
- The defence was not considered.
- The trial Court shifted the burden of proof.
- The Court failed to observe Article 50 (a) of the Constitution.
- The Sentence was harsh
- The Case was not proved to the required standard.

4. On appeal, the appellant relied on his written submissions summarized as follows; that the sentences were to run concurrently but in Prison they were recorded to consecutively, and he is now to serve 8 years, yet he was to serve 2 years for each sentence of the same.

He also added orally that there was an allegation that he was found with an I/D but there was no proof.

5. The State opposed the appeal. It was urged that the Prosecution witnesses were consistent. The Complainant had testified that the appellant came out of the vehicle with a gun and said he was a Police Officer. The Complainant refused to enter the vehicle as ordered attracting a crowd. The appellant's accomplices run away but he did not and he was apprehended on the spot.

The reference by the trial Court to the Civil Procedure was an error.

6. PW1 the Complainant testified that after withdrawing some money and on loading a motor cycle he notices a vehicle follow him. The vehicle then blocked him and 3 people among them the appellant came out and accused him of riding the bike wrongly, they asked him to entertain their vehicle and he refused as he suspected them. One of them had a pistol, the appellant said they were Police Officers and showed him a police card.

The Complainant refused to enter the vehicle, grabbed the I/D and held onto the appellant attracting a crowd. The appellant's accomplices entered the car and left him being lynched; he was rescued by the police.

7. PW2 a boda boda rider corroborated the Evidence of PW1 that the police rescued the appellant and collected the police identification. He also confirmed that he saw two other people who attempted to arrest the Complainant and how the other 2 left the appellant behind.

8. PW3 confirmed that he was with the Complainant earlier and saw him deposit 30,000/- in Mpesa.

They later received a report of an accident on going to the scene they found that some people had wanted to rob the Complainant.

9. PW4 the investigating Officer said that they received a report of a suspected robber. They went to the scene and found the Complainant and the accused. He had received information that the suspect was beaten and arrested. On arrival, they found a mob beating the appellant and saved him. The Complainant told them that at 9a.m. he withdrew Kshs.70,000/- from Cooperative Bank and was followed by a motor vehicle KBP 187Y on reaching the fly over the vehicle blocked him alleging that he was riding recklessly. The accused held him, boda boda people ran to his rescue. The Complainant held on to the appellant but the rest escaped. The appellant removed a fake police I/D as he was being beaten.

10. In his defence the appellant said he had sought for a lift from a taxi and paid Kshs.150/- going to Malaba from Webuye as his bus broke down at Webuye. He was from Nakuru. On the way a motor bike hit their car and they followed to fly over. When they stopped the cyclist started screaming and want to stone them. The taxi driver entered the car and left. He was beaten and his identification card taken and everything stolen. The police rescued him he denied the fake I/D being his.

11. I find that the Prosecution proved its case. The Evidence of the witnesses was consistent Evidence of PW1 was corroborated by PW2 and 3. PW4 got information similar to the Evidence in Court. PW4 and his colleagues saved the appellant who was caught in the act and was being lynch by members of public. There is also ample Evidence that he was in possession of a fake police I/D impersonating a police Officer.

12. I find the defence to be a mere denial and the same did not dislodge the strong Prosecution case.

13. Consequently, I do agree with the conviction. I find the Sentence of 6 and 2 years respectively to be within the Law and there is there therefore no basis to interfere with the same. Appeal is hereby dismissed.

DATED and DELIVERED at BUNGOMA this 22nd day of February, 2018

ALI-ARONI

JUDGE