



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAPENGURIA

CRIMINAL APPEAL NUMBER 18 OF 2017

CORAM: S. M. GITHINJI

(From original conviction and sentence in criminal case number 364 of 2017 in the Principal Magistrate’s Court at Kapenguria)

LOKORIMARAN LOCHIELE APPELLANT

VERSUS

REPUBLIC..... RESPONDENT

JUDGMENT

The Appellant herein, one Lokorimaran Lochiele was charged in the lower court with five counts or **Robbery with Violence, Contrary to Section 296 of the Penal Code.**

The particulars of the offence in the first count are that on 24th day of March, 2017 at around 11.00hours at Lami Nyeusi Area along Lodwar/Kapenguria Road in Pokot Central Sub-County, within West Pokot County jointly with others not before court while armed with dangerous weapons namely AK 47 Rifles robbed Kibet Kurgat a laptop make HP Pavilion Serial number 8CG61021W1 valued at kshs.58,000/-, ATM card worth Kshs.500/-, cash money Kshs.50,000/- and National ID Card, all valued at Kshs.108,500/- and immediately at the time of such robbery used violence against Kibet Kurgat.

The particulars in the offences in counts 2, 3, 4 and 5 are similar to those of count one, save for that in count 2 the persons robbed is Dominic Rono, of a wallet worth kshs.500/-, ATM card worth kshs.500/-, cash money kshs.16,000/-, National ID and a student ID, all valued at Kshs.17,000/- and immediately at the time of such robbery used violence against him; in count 3 the person robbed is Gatambia Ndungu of a mobile phone make Tecno C5 worth 23,000/-, cash money kshs.7,000/-, a packet of cigarettes worth kshs.80/- and a Krest soda worth kshs.100/- all valued at kshs.30,180/- and immediately at the time of such robbery used violence against him; in the fourth count the person allegedly robbed is Milkah Chepkorir, of a mobile phone make Tecno C9 worth kshs.16,000/- and immediately at the time of such robbery used actual violence against her; in the fifth count the person allegedly robbed is John Komen, of cash money kshs.7,500/- and immediately at the time of such robbery used violence against him.

The appellant also faced one alternative count of **handling stolen goods, contrary to section 322(1)(2) of the Penal Code.**

The particulars hereof being that on the 28th day of March, 2017 at around 19.00hours at Sigor Market in Pokot Central Sub-County, within Pokot County, the appellant otherwise than in the course of stealing dishonestly retained one lap top serial number 8CG61021W1 and a Tecno mobile phone serial number C9 F7N2 IMEI 358073071884105 and IMEI 358073073071884113, knowing or having reason to believe them to be stolen goods.

The prosecution case is that Kibet Kurgat Bernard, who gave evidence as PW-1, works with KNCHR as a regional co-ordinator North Rift region. John Komen the PW-2 in this case also works with KNCHR as a driver. Gatamba Ndung’u the PW-3 in this case as well works with KNCHR in Kitale, as a Human Rights Officer. Milka Chepkorir Kuto works with KNURP as an intern.

On 24th March, 2017 the four aforementioned persons together with another namely Dominic Rono, at about 11.00am, were from Turkana County, heading towards Kitale Town aboard G. K. Toyota Prado, registration number GKB 155F, driven by John Komen. Along the way, at a place called Lami Nyeusi, next to Orwa, they were stopped by strange five persons of whom were armed with AK 47 Rifles. The men were in shukas, jungle green shorts and tyre shoes. They stopped the vehicle. PW-2 stopped the vehicle. The men requested for water and were given. PW-2 wanted to drive on but one of the men took the ignition key from the vehicle. They were joined by more men who were driving cattle to make their number about 15. PW-1 who had sat next to the driver was ordered to open the door. He did so. They ordered him to give out his phone. It is the appellant who gave him the order. PW-1 gave him cash 10,000/-. The appellant handed the cash to another stout man and demanded for more. The appellant searched PW-1 and found 30,000/- more of which he picked. PW-1 was ordered to alight. He did so. The appellant picked his laptop from the vehicle through the window and handed it to the stout man. PW-1 had bought the laptop from Hague for 58,000/- His Samsung Phone, a JS was also taken. From PW-2 they took his 500/- before he was forced

out of the vehicle. One of the assailants drew out a knife and PW-4 pleaded with him in Pokot Language to spare them. He was turned while lying down and his 7,500/- taken. Later he noted his jacket, T-shirt and shoes of which were in the vehicle had been taken. From PW-3 they took his Tecno C5 valued at 23,000/- , cash 7,000/-, pack of cigarettes and a gas lighter. He was able to identify the appellant who was slender, had pierced ears and was in Akala shoes. PW-4 was hit by one of the assailants with a gun butt and pulled outside the vehicle. They wanted to stab PW-2 but PW-4 restrained them. PW-4's phone was charging in the vehicle. She urged the assailants not to take it. The one who had a knife was near the car. He abused her. They wanted to open the car boot but PW-4 urged them not to since they had taken enough. They then escaped with what they had after handing the car key to PW-2. The victims proceeded to Orwa AP's camp where they made a report. They were advised to report at Marich Police Station. They went and reported to the OCS. PW-4 was taken Marich Dispensary for treatment. On 16.5.2017 her P-3 form was filled at Kapenguria County Referral Hospital by PW-5. She had injuries on the back of her head. The injury could have been caused by a blunt object. The degree of injury was assessed as harm.

PW-6 who was investigating the case was informed of suspects' presence in Sigor. He laid ambush at the place with help of KPR. Near a cybershop, they noticed three men who emerged from the place. Two were dressed in Maasai sheets around the waist while the 3rd one had a white sheet and a blue top. The 3rd one had a laptop covered in the sheet. They quickly arrested him. They recovered a laptop, its charger and a phone. He was taken to the police station with the exhibits. PW-6 was with PW-7 during the arrest of the appellant. He disclosed that the recovered phone was a Tecno C9. The laptop was pavilion in make and its charger. He also had his own money Kshs.450/-.

PW-1 recognized the recovered laptop as his, pavilion in make and its charger. He was able to open it using his password "**Kibet**" and it contained all his documents. The recovered phone, Tecno C9 was recognized by PW-4. She opened it using password to unlock screen and her photograph appeared.

The appellant in his defense gave unsworn testimony and called no witness. His case is that he lives in Lomut and is a herder. He denied the offences stating that he was at Lomut area. He was at home and could not tell about the offences. He proceeded to Sigor Centre to have a soda and bread. Three men appeared and he was asked to accompany them to the police station. At 3.00pm he was told to board a vehicle and was taken to Marich and then Kapenguria Police Station. He was charged with an offence he did not commit.

The trial court evaluated the evidence and found that he was identified at the scene and was later found in possession of some of the robbed items. He was convicted and sentenced to death.

Dissatisfied with the said conviction and sentence, he appealed to this court on the grounds that:-

- 1. He pleaded not guilty at the trial.**
- 2. His defense was not weighed.**
- 3. He was convicted on circumstantial evidence.**
- 4. The evidence was short of warranting a conviction.**
- 5. The trial was not conducted in a just and fair manner.**
- 6. The burden of proof was shifted to him.**

Mr. Katina submitted on behalf of the appellant and he challenged the evidence on identification of the appellant as the culprit.

The state opposed the appeal on the grounds that all ingredients of robbery with violence were established by the prosecution, and given that he was soon thereafter arrested in possession of part of the robbed items the doctrine of recent possession placed him as a culprit.

I have considered the evidence adduced in the matter by both sides as recorded in the lower court. I have as well considered the judgment, grounds of appeal and submissions by both parties.

The evidence of PW-1 and PW-3 shows the two identified the appellant at the scene. It was during the day and were with the assailants for about 15 minutes of which was enough time to identify someone. They described of what they noted about him at the scene.

Even if this evidence was to be challenged, it is well buttressed by the fact that 4 days thereafter the appellant was arrested in possession of the laptop robbed from PW-1 and its charger. He also had a phone robbed from PW-4. The items were recognized and identified by their alleged owners to the court beyond reasonable doubt. The accused in his defense did not attempt at all to state how he had come into their possession. He merely denied it while the evidence of PW-6 and 7 is clear as the day that he had the items. The said items, given their nature and use, are of the kind of which is unlikely to change hands very fast in a remote area of West Pokot, Orwa area. 4 days given the circumstances is therefore '**recent**.' The doctrine of recent possession is well applicable in this case where it must be held, in absence of any reasonable explanation by the appellant on how he got in possession of the items, that he took part in the said robbery. This is as was held in the case of **Robert Obara – versus – Republic Criminal Appeal number 4 of [2015] eKLR**.

I therefore find that the appellant took part in the said robberies as outlined in count 1, 3, 4 and 5 of which he was convicted and sentenced. Death sentence though not mandatory for the offences, is lawful. It is provided for under the law and I have no cause at all to interfere with it.

I do accordingly find that the appeal is unmerited and is hereby dismissed.

Judgment read and signed in the open court in presence of Madam Kiptoo for the state and Madam Opondo, holding brief for Madam Chebet for the appellant, and the appellant himself, this 11th day of April, 2018.

S. M. GITHINJI

JUDGE

11.4.2018