



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAROK
CRIMINAL APPEAL NOS. 32 AND 34 OF 2016

(From the original conviction and sentence dated 2/9/2016 in Criminal Case 873 of 2015 in the Chief Magistrate's court at Narok, R. v. 1. Gideon Kipkoech Korir 2. Benard Korir

GIDEON KIPKOECH KORIR.....1ST APPELLANT

BENARD KORIR.....2ND APPELLANT

VERSUS

REPUBLICRESPONDENT

JUDGEMENT

1. The appellants have appealed against their conviction and sentence of death in respect of robbery with violence contrary to section 295 as read with 296(2) of the Penal Code (Cap 63) Laws of Kenya.
2. The state has supported both the conviction and sentence.
3. The appellants were convicted on the visual identification evidence of Cornelius Marwa Kiru (PW 2), who is the complainant. It was his evidence that he identified the 2 appellants due to security lights when he passed the 2 appellants on the road and went ahead of them.
4. The first appellant has raised 9 grounds of appeal in his petition of appeal to this court. In ground 1, he has stated the unchallengeable fact that he did not plead guilty. In ground 2, the appellant has faulted the trial court both in law and fact in convicting him on the contradictory and inconsistent prosecution evidence, which was not credible. In this regard, the evidence of the complainant is crucial. According to the complainant, on 6/6/2015 at about 10.00 p.m., he was going home with his wife and a lady worker. While en-route at Nyati Club, he found people seated at the side of the road while some of them were standing. There were more than 5 boys. At that scene, there were street security lights which were on.
5. Furthermore, as he passed them, one of the boys greeted him and continued walking. Those boys followed them. Suddenly, he was hit from the back and he fell down. The complainant's wife and his worker ran off. The attackers then robbed him of sh.10,000/-, a hat, a phone, his identification card and ATM cards. They then cut him on the left side of his face.
6. He then rose up and shortly thereafter, he met his wife and the worker with police. He then told the police what had happened to him and pointed the direction where the robbers had proceeded to. The police chased them and arrested the 2 accused persons. He then recognized the 2 appellants who were under the security lights when he passed them. He further testified that he had not seen them before.

7. The evidence of the complainant is supported by that of No. xxx PC David Musau (PW 3). The complainant reported the robbery to him after which this police officer among others chased the robbers. PW 3 was able to arrest the appellant as one of the robbers. He further testified that he did not recover anything from this appellant.

8. Additionally, the complainant was taken for medical examination at the Narok County Hospital. He was examined by Hillary Kiptoo (PW 1). The complainant told PW 1 that he was assaulted by 2 persons whom he knew. PW 1 found that the complainant had injuries on the left side of his head and below the left eye. He also found that his left fore arm was injured and both his thighs were painful. He further testified that the injuries were caused by a blunt object. He then put in evidence the P3 form as exhibit 1. In the circumstances, I find that the evidence of PW 2 and PW 3 is cogent, consistent and credible. In the circumstances, I find that this ground of appeal is lacking in merit and is hereby dismissed.

9. In ground 5, the appellant has faulted the trial court both in law and fact by delivering a judgement that was full of misdirections and errors which resulted in a miscarriage of justice. I have considered the judgement and I find that the trial court considered the entire evidence that was tendered in that court. After doing so, it found that the appellants were positively identified by the complainant. In the circumstances, I find that this ground of appeal is lacking in merit and is hereby dismissed.

10. In ground 3, the appellant has faulted the trial court for not conducting the entire trial according to law. In this regard, I have examined the record of the proceedings and I find that the appellant was given an opportunity to cross examine the prosecution witnesses and he did so. He was then explained his rights in respect of defending himself after being put on his defence. He decided to give sworn evidence and was cross examined. It was his evidence that he had gone to Nyati to sell eggs, before reaching Nyati, he heard gunshots. As a result, he ran for safety and then he was arrested by the police. The next morning, he was charged in court for this offence in respect of which he has no knowledge. He then complained that the wife of the complainant and the investigating officer did not testify. In short, his defence is that he was framed in respect of this offence. In the circumstances, his fair trial rights were respected and I find that he was accorded a fair trial. And for this reason, I find that this ground of appeal lacks merit and is hereby dismissed.

11. In ground 4, the appellant has faulted the trial court for delivering a judgement which was full of misdirections and errors, which resulted in a miscarriage of justice. I have considered the judgement of the court and I find that it considered the entire evidence and found that the appellant was positively identified as one of the robbers. His defence that he was framed was considered and rightly rejected. In the circumstances, I find no merit in this ground of appeal and is hereby dismissed.

12. In ground 6 and 7, the appellant has faulted the trial court for imposing the death penalty. In this regard, I find that the sentence of death is authorized by law and the trial court imposed that sentence in accordance with the law.

13. This is a first appeal. As a first appeal court according to *Okeno v. R. (1972) EA 32*, I am required to re-assess the entire evidence upon which the appellant was convicted. I have done so and I find that the appellant was convicted on ample evidence.

14. The upshot of the foregoing is that the appellant's appeal is hereby dismissed in its entirety.

BENARD KORIR – 2ND APPELLANT

15. This appellant has raised similar grounds of appeal like those of the 1st appellant. The reasons given for the dismissal of the 1st appellant's appeal fully apply to the appeal of the 2nd appellant. The upshot of the foregoing is that the appeal of the 2nd appellant is dismissed in its entirety.

Judgement delivered in open court this 15th day of November, 2017 in the presence of the appellants and Ms Torosi for the state.

J. M. Bwonwonga

Judge

15/11/2017