REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

CRIMINAL APPEALS NOS 55 AND 61 OF 2014

(CONSOLIDATED)

1. AGNES NGINA NGUGI

2. NAOMI NJERI WANJIKU…….…….....…..APPELLANTS

VERSUS

REPUBLIC…….…....….RESPONDENT

(Appeal against Conviction and Sentence in Thika CM Criminal Case No 1507 of 2011 – D.A. Orimba RM)

J U D G M E N T

1. The Appellants in these two consolidated appeals, **Agnes Ngina Ngugi** (2nd accused before the trial court) and **Naomi Njeri Wanjiku** (1st accused) and also their co-accused, one **James Njuguna Ngugi** (3rd accused) were convicted after trial of ***robbery with violence*** contrary to **section 296(2)** of the ***Penal Code***. It was alleged that in the particulars of the offence that on 24th March 2011 at Ruiru Township in Ruiru District within Kiambu County, jointly and with others not before the court, and while armed with dangerous weapons, namely a pistol and pangas, they robbed one **Henry Karuru Kareithi** of some cash, a motor vehicle and other items, all valued at **KShs 2,004,600/00**, and that at the time of the robbery they threatened to use actual violence to the said **Henry Karuru Kareithi**. They were each sentenced to death. They all appealed against the conviction and sentence.

2. James Njuguna Ngugi's appeal (**Murang'a HC Criminal Appeal No 437 of 2013**) was for some reason heard and disposed of alone; it should have been consolidated and heard together with the present appeals as it the normal practice with appeals emanating from the same trial. In a judgement dated and delivered on 29th November 2013 (Mbogholi Msagha and Radido Stephen, JJ) the appeal was partially allowed in the following words-

> ***"We have asked ourselves whether or not the offence of robbery with violence contrary to section 296(2) of the Penal Code was proved. With respect we are unable to find any evidence in that regard. However, we are persuaded that sufficient evidence was adduced to prove the offence of theft of a motor vehicle contrary to section 278 A of the Penal Code. Although the appellant was not one of the people who attacked PW1, his engagement with PW1 earlier in the day and his being found at the scene in possession of the said motor vehicle conclusively proves that he was one of the people who devised the scheme to steal the motor vehicle and did so. The doctrine of***

recent possession applies in this case.

In our judgment therefore, we allow the appeal and quash the conviction on the charge of robbery with violence contrary to section 296(2) of the Penal Code and set aside the sentence imposed. In place thereof, we substitute a conviction for the offence of stealing a motor vehicle contrary to section 278A of the Penal Code.

The Appellant was charged on 28th March, 2011 and was in custody up to the time he was sentenced on 11th January, 2013 a period of about two years. To date he has been in prison for about 11 months making a total of just about three years considering the period he spent in custody in the course of the trial.

The offence of stealing a motor vehicle attracts a sentence of seven years imprisonment. In our judgement, we have considered that the motor vehicle was recovered and that the Appellant spent a substantial period of time in custody while the trial was going on. Under section 333(2) of the Criminal Procedure Code, we have taken that period into consideration. We have come to a conclusion that the period served in prison is sufficient punishment and therefore sentence the appellant to a period already served such that he shall be released forthwith unless otherwise lawfully held. Orders accordingly."

3. On 25th November 2015 we partially allowed these two current appeals for reasons to appear in this present judgement. We quashed the Appellants' conviction for capital robbery under section 296(2) of the Penal Code and set aside the death sentences imposed upon them. We substituted for each appellant under section 179 of the Criminal Procedure Code a conviction for theft of a motor vehicle under section 278A of the Penal Code. We sentenced each Appellant to such term of imprisonment (effective from the date of their sentencing by the trial court – 11/01/2013) as would enable them to be set at liberty forthwith unless otherwise lawfully held.

4. The reasons for our decision are the very same as those given in the judgement in Murang'a HC Criminal Appeal No 437 of 2013 aforesaid, and which reasons are quoted elsewhere above in this judgment.

DATED AND SIGNED AT MURANG'A THIS 8TH DAY OF MARCH 2016

H.P.G. WAWERU **A. MSHILA**

JUDGE **JUDGE**

DELIVERED AT MURANG'A THIS 11TH DAY OF MARCH 2016