



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL APPEAL NO. 134 OF 2014

NTARANGWI KIREMA..... APPELLANT

VERSUS

REPUBLIC RESPONDENT

(From the original conviction and sentence in criminal case NO. 968 of 2012 of the Chief Magistrate's Court at Maua by C.M. Maundu – Senior Principal Magistrate)

JUDGMENT

NTARANGWI KIREMA, the appellant, was convicted for the offence of robbery with violence contrary to section 296 (2) of the Penal Code.

The particulars of the offence were that on the 12th day of January 2012 at Antuambui location, in Igembe North District within Meru County, jointly while armed with a panga robbed **CHARLES MUGAMBI** of miraa valued at Kshs. 10,000/= and during the time of the said robbery wounded **CHARLES MUGAMBI**.

The appellant was tried and convicted of the offence. He was sentenced to suffer death. He now appeal against conviction and sentence.

The appellant was unrepresented. He raised nine grounds of appeal which can be summarized as follows:

1. That the learned trial magistrate erred in law and fact by failing to find that the incident was a fight over miraa ownership.
2. That the learned trial magistrate erred in law and fact by not making a finding that there was a grudge between the appellant and the complainant.
3. That the learned trial magistrate erred in law and in fact by convicting the appellant without sufficient evidence.

The state opposed the appeal and was represented by Mr. Odhiambo, the learned counsel.

The facts of the prosecution case briefly were as follows:

The complainant found the appellant stealing miraa he (complainant) was meant to guard. When he asked him what he was doing, he went and cut him severally with a machete.

The appellant denied any involvement in the offence and contended that on 12th, he was arrested and beaten before being taken to the police.

This is a first appellate court as expected, I have analyzed and evaluated afresh all the evidence adduced before the lower court and I have drawn my own conclusions while bearing in mind that I neither saw nor heard any of the witnesses. I will be guided by the celebrated Case of **OKENO Vs. REPUBLIC 1972 EA 32**.

The evidence of the complainant is as he was guarding the miraa of one Cyrus, he saw the appellant on top of a miraa tree plucking the same. When he asked him what he was doing, the appellant jumped down and attacked him viciously with a machete. Peter Gitonga (PW3) and Isaac Mungathia (PW2) went and rescued him.

In their evidence PW2 and PW3 confirmed that they found the appellant using a machete to attack the complainant. when they intervened, the appellant ran away with some miraa that was in a sack.

The appellant did not challenge these witnesses on the issue of the alleged fight between him and the complainant. In his defence he did not contend that he fought with the complainant but said that the complainant and PW2 and PW3 arrested him and beat him before taking him to the police. He claimed he had sustained injuries but he never supported this claim with any evidence. The learned trial magistrate was justified in dismissing the defence as an afterthought.

The issue of a grudge with the complainant was clearly an afterthought and that is the reason the trial magistrate termed it as such. He never challenged the complainant even after the latter had testified that they were friends.

The offence of robbery is defined under section 295 of the Penal Code as follows:

Any person who steals anything, and, at or immediately before or immediately after the time of stealing it, uses or threatens to use actual violence to any person or property in order to obtain or retain the thing stolen or to prevent or overcome resistance to its being stolen or retained, is guilty of the felony termed robbery.

In the instant case there is evidence that the appellant had stolen some miraa and immediately after used actual violence. The penalty is provided under section 296 (2) of the penal code which states:

If the offender is armed with any dangerous or offensive weapon or instrument, or is in company with one or more other person or persons, or if, at or immediately before or immediately after the time of the robbery, he wounds, beats, strikes or uses any other personal violence to any person, he shall be sentenced to death.

The appellant was sentenced to the only available legal sentence.

The upshot of the foregoing analysis is that the appeal must fail. I dismiss it in entirety.

DATED at Meru 20th day of December 2016

KIARIE WAWERU KIARIE

JUDGE