



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CRIMINAL APPEAL NO. 426 OF 2010

SAMUEL NJOROGE.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(From original Conviction and Sentence in Criminal Case No. 190 of 2009 of the

Principal Magistrate's Court at Kwale – Hon. Ogembo - PM)

JUDGMENT

The Appellant **SAMUEL NJOROGE** was Convicted and Sentenced to suffer death for the offence of robbery with violence contrary to section 296(2) of the Penal Code.

The particulars being that:-

“On the 23rd day of June, 2008 at about 7:30 p.m. at Tiwi Location in Kwale County, jointly, with others not before the Court being armed with dangerous weapons namely pistol robbed MARGARET MURUGI of Ksh. 20,000/= and immediately before or immediately after the time of such robbery threatened to use actual violence to the said MARGARET MURUGI”.

The prosecution called four(4) Witnesses in support of their case. The Accused gave a sworn statement.

The Complainants evidence is to the effect that on the 23rd day of June, 2008 at about 7:30 p.m. She was visited in her house by three(3) men. The three presented themselves as police officers from Diani police station. They told her that she was dealing in illegal business and they asked for Ksh. 10,000/= so as to let her off the hook. She said that she did not have the money but her mother agreed to give them the money when they started driving off. They were released but the following morning she decided to report the matter to police at Diani.

PW 3 is the officer who conducted an identification parade for the Complainant. The Accused stated that he knew the Complainant as they used to deal in the business of selling drugs together. We note from the outset that the alleged attackers were invited into the house and went upstairs to have a private chat with the Complainant.

It is here that according to her, a demand of Ksh. 10,000/= was made by the men who alleged to be police officers. It was alleged that she was dealing in an illegal trade. It was when the men insisted on taking her to police station that she agreed to part with the said money. The Accused was charged with robbery with

violence. The Complainant voluntarily gave out the Ksh. 10,000/=. No force or violence was meted out on her.

The threats if any were that she was to be taken to police station. Threats of being taken to police station cannot amount to threats of violence. She should have agreed to be taken to police station so as to record statements so as to counter allegations made out against her. The Appellant alleges that the Complainant and himself used to deal with the selling of Narcotic drugs at Diani and Ukunda and they parted ways.

This could explain why she parted with Ksh. 10,000/= so as not to be taken to police station. This was a tainted deal and she cannot benefit from it. The Accused could have been charged with the offence of demanding money by menaces or obtaining money by false pretences or any other related offence but not the offence of robbery with violence as the ingredients of robbery with violence are missing from the facts of this case. We find that the Conviction of the appellant for the offence of robbery with violence was not safe. We find that the appeal has merit and its allowed.

We accordingly quash the Conviction and set aside the Sentence.

The Appellant is set at liberty unless otherwise lawfully held.

Judgment delivered dated and signed this 15th of April, 2015.

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M. ODERO

M. MUYA

JUDGE

JUDGE

In the open Court and in the presence of:-

Court clerk

Learned State Counsel

Appellant