



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

CRIMINAL APPEAL NO. 48 OF 2013

FRANCIS KARIUKI MURITHI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

From original conviction and sentence in Cr. Case No. 1167 of 2012 at the

Chief Magistrate's Court, Embu by HON. P.C. BIWOTT SPM on 30th August 2013

J U D G M E N T

FRANCIS KARIUKI MURITHI the Appellant herein was initially charged with Robbery with Violence contrary to section 296(2) Penal Code. He pleaded not guilty and the matter proceeded to full hearing. The charge was then reduced to simple robbery under section 296 (1) Penal Code and he was convicted and sentenced to three (3) years imprisonment.

1. The Appellant then filed this appeal against both conviction and sentence citing several grounds.
2. When he appeared on 23/4/2012 for the hearing of this appeal he withdrew his appeal against conviction. He said he was satisfied with the conviction. He therefore made submissions on the appeal against the sentence only.
3. In his submissions he simply asked the Court to consider reducing his sentence.
4. In opposing the appeal Mr. Wanyonyi the learned State Counsel submitted that the sentence was lawful and should not be interfered with. And that the Appellant had not shown any reason why the sentence should be reduced.
5. Though the Appellant has withdrawn his appeal against conviction I think it's important that I give a brief summary of the facts which are that PW1 who carries out boda boda transport using a motorbike KMCJ/159 on behalf of PW2 was in Embu town on 6/9/2012 at 3am. While at the roundabout near the stadium he was flagged by a male passenger.
6. He stopped and picked him. The said passenger placed a piece of wood on his throat squeezing him and he fell. The passenger was joined by another man who came carrying a panga. By then PW1 had fallen down. They beat him but he managed to run away. They went with the motorbike.

7. PW1 informed his fellow motorbike riders and his employer (PW2) who came to assist him. The Appellant was cornered while riding the motor bike KMCJ at a high speed. He fell down in a ditch and his passenger disappeared. He was arrested and the motorbike recovered. Photos of this motorbike were produced as EXB7. PW2 also satisfied the Court that the motorbike KMCJ belonged to him (EXB 3-6).

8. In his defence the Appellant in his sworn evidence stated that he is a miraa seller. And on this night he sold his miraa until very late. He left at 2.30am for home. While at the Mosque near the stadium he was hit by a motorbike and the rider escaped. After a while a rider came and he requested him for assistance. Instead the rider went and brought others who beat him before being taken to the Police Station.

9. From all the facts above there is the evidence of PW1, PW2, PW3 and PW5 that the Appellant was found in possession of PW2's motorbike (EXB7) which had been robbed from PW1 a while prior to the recovery. He had fallen with it as he drove very fast escaping from other riders who were giving chase.

10. Indeed no one had knocked the Appellant with a motorbike. The learned trial Magistrate analyzed this evidence well and came to the correct conclusion that the offence revealed from the evidence was Robbery contrary to section 296(1) Penal Code and that the Appellant was one of the robbers. Having satisfied myself on the issue of the conviction I now move to the issue before me.

11. After the conviction the Appellant was sentenced to serve three (3) years imprisonment. It is this sentence that he is contesting. The issue for determination therefore is whether the sentence of three (3) years imprisonment for the said offence is unlawful and/or excessively harsh.

12. The sentence for this offence is a maximum of fourteen (14) years. Before the sentence was meted out the Appellant was given a chance to mitigate. The record shows that his mitigation was "NIL" meaning he said nothing in mitigation. The learned trial Magistrate also found him not to be remorseful.

13. The Appellant was given a sentence of three (3) years. It follows that the sentence was therefore lawful. Can it then be said to have been excessively harsh? It is the Appellant who ought to have explained to this Court why he felt that the sentence should be reduced. I did not hear him say anything in that direction. I do not therefore have any reason to make me interfere with that lawful sentence. The result is that the appeal lacks merit and is dismissed. The conviction and sentence are confirmed.

Right of appeal explained.

DATED & SIGNED AT EMBU THIS 29TH DAY OF APRIL 2014

H.I. ONG'UDI

J U D G E

**DELIVERED IN OPEN COURT AT EMBU ON 30TH APRIL 2014 ON BEHALF OF JUSTICE
H.I. ONG'UDI BY;**

D.S. MAJANJA

JUDGE