



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL APPEAL NO. 153 OF 2011**

M M P..... APPELLANT

VERSUS

REPUBLIC ..... RESPONDENT

**JUDGMENT**

The appellant M M P was charged with the offence of robbery with violence contrary to Section 296 (2) of the Penal code. It was alleged in the particulars of the offence that on 10<sup>th</sup> August 2010 at Kerarapon sub location Kajiado North District, jointly with another not before the court being armed with an offensive weapon namely a panga they robbed Denis Maragara Kinuthia of one mobile phone Make Nokia 6131 worth Kshs. 12,000/= and cash Kshs. 4,000/= all valued at Kshs. 16,000/= and at or immediately before or immediately after the time of such robbery used actual violence to the said Denis Maragara Kinuthia.

In the alternative he was charged with the offence of handling stolen goods contrary to Section 322 (1) of the Penal Code. It was alleged that on the same day and place otherwise than in the cause of stealing he dishonestly received or retained one mobile phone make Nokia 6131 knowing or having reason to believe it to be stolen goods.

After a full trial he was convicted of the offence of robbery with violence and since his age was assessed at below 18 years, the learned trial magistrate ordered that he be held at the pleasure of the President. This is an appeal against the said conviction and sentence.

The complainant is an Administration Police Officer who on 10<sup>th</sup> August, 2010 had gone to visit his grandmother. On his way back at about 5.30 p.m. he met a lady friend called Beatrice Njeri and encountered two young men one of whom held his neck. He was armed with a club. The other young man had a hidden machete in his arm. The one who held him asked him to surrender all his money and phone. He tried to resist but was hit on his knees with a club and ordered to sit down. The lady friend also laid down.

The complainant was hit with a machete near the left ear and felt blood oozing. In the process he was robbed of the money and phone set out in the charge sheet. He had a bag which was checked but returned to him when it turned out to be empty. He asked the assailants for his sim card which was given to him. The young men then ran into the forest but he feared to follow them. He met some young men whom he informed of the incident and learnt that it was not the first time someone had been attacked there.

On reaching home he found his mother who informed him that one of the assailants had been arrested and escorted to Kerarapon Police Station. This was after about 30 minutes. The complainant then went to Ngong Police Station where he was referred to Ngong District hospital and treated. He then went to Kerarapon Police Station where he found the appellant and positively identified his phone. He was also shown a machete allegedly recovered from the appellant. In court in the process of identifying the phone, he used a security code and also showed the court his photographs in the phone. The money was never recovered.

The incident of the robbery took about 10 minutes and was in broad day light whereby he saw the appellant well. P.W. 2 and P.W. 3 are the two people who met the lady who was with the complainant

after the robbery. The lady informed them of the robbery and asked for assistance. She also gave them the description of the two men. They entered the forest and encountered two people whom they questioned. They demanded to search them and one had a machete. That man is the appellant herein.

On being asked what the machete was for, he said it was for cutting cattle feed. This machete was concealed under his arm. On being asked if any of them had a phone they denied but on searching the appellant the phone was found. On being asked why he was lying that he had no phone he said it had no battery but that one was also a lie because the phone had a battery. He also told the two young men that the phone had no sim card. The two suspects were ordered to sit down but one got a chance and escaped.

P.W. 2 and P.W. 3 identified both the machete and phone. P.W. 5 Beatrice Njeri Kamau is the lady who was in company of the complainant on the date of the robbery. She described how the complainant was robbed at about 5.30 p.m. On the following day she was able to identify the appellant. The complainant was examined by Dr. Zephania Kamau who confirmed the injuries sustained. The appellant was received by P.C. Jones Sang at Kerarapon Patrol Base where he was brought by members of public. The appellant was subsequently charged.

In his defence the appellant said that before his arrest he was a pupil at Magutwini Primary School in class 8. He understood the charge against him but knew nothing about it. The learned trial magistrate believed the evidence against the appellant and convicted him.

As required of us we have made an independent evaluation of the evidence. The robbery took place at about 5.30 p.m. The complainant and P.W. 5 gave a consistent account of what transpired. The robbery took between 5 and 10 minutes according to the evidence of P.W. 1 and P.W. 5. The appellant was apprehended by P.W. 2 and P.W. 3 in the forest soon after the robbery. He had a machete and the complainant's phone in his possession. The phone was positively identified by the complainant and also P.W. 3 and 4 who recovered it from him.

The complainant provided the security code and showed the court his photographs in the phone. The recovery of the machete and the phone in the possession of the appellant was incriminating beyond doubt. The appellant was in company of another when they attacked the complainant. The complainant was injured in the process of the robbery. Medical evidence was tendered in court. The ingredients of the offence of robbery with violence were satisfied. The conviction was therefore well founded.

The appellant was below the age of 18 years and the sentence imposed by the learned trial magistrate was lawful. This appeal is dismissed.

**SIGNED DATED and DELIVERED in court this 1<sup>st</sup> Day of July 2014.**

**A.MBOGHOLI MSAGHA**

**L.A. ACHODE**

**JUDGE**

**JUDGE**