



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERICHO

CRIMINAL APPEAL NO. 23 OF 2011

**(Being an Appeal Against the Original Conviction and Sentence by the Honourable T. Okelo,
Principal Magistrate at Bomet in Criminal Case No. 215 of 2009 in the Judgment Delivered on
25.5.2011)**

DAVID KIPLANGAT RONO ALIAS RASTA.....APPELLANT

-VERSUS-

REPUBLIC.....RESPONDENT

(Before Hon. Justice Byram Ongaya and Hon. Justice G.W. Ngenye on Thursday 24th October, 2013)

JUDGMENT

The appellant is David Kiplangat Rono Alias Rasta. He was charged with three counts of the offence of robbery with violence contrary to Section 296(2) of the Penal Code, and two counts of assault causing actual bodily harm contrary to Section 251 of the Penal Code.

He was charged with the offences together with two co-accused persons who were not found guilty by the trial court and were accordingly acquitted. The trial court found that the prosecution had established the offences in all the counts against the appellant and he was convicted accordingly.

For the 1st count, the appellant was sentenced to the mandatory death sentence, for the 2nd count, he was sentenced to one year imprisonment while for the 3rd count, he was also sentenced to one year imprisonment. The prison terms were to run concurrently.

The appellant filed an appeal against the conviction and sentences. Counsel for the appellant, Mr. Mutanya Advocate, raised two crucial grounds of appeal. First, he submitted that there were contradictions in the evidence on record before the trial court so that the conviction was not sustainable. The contradictions related to the items subject of the robbery, namely a mobile phone as well as the recovery of the weapons used namely, a sword and a bolt studded club also referred to as the nut headed stick that the appellant is said to have used to attack the complainants. The second discrepancy related to the time of crime being 7.30p.m. or 7.20p.m. or thereabouts on 19.2.2010 when, according to the complainants PW1 and PW2, it was not dark and they could clearly see the appellant.

The court has examined the record of the proceedings in the trial court and finds that there are no significant inconsistencies in the evidence. PW1 and PW2 are clear in their testimony that the offence was committed at about 7.30p.m or 7.20p.m and it was not dark so that they could clearly see the appellant.

PW1 vividly recalled the weapons used including the nut headed stick and a knife with an animal skin.

PW2 also testified about the knife and the nut headed stick. PW4 was a brother to the appellant and the village elder at a place known as Kiptagei, the scene of the robbery. He testified that on the day following the evening of the robbery, he received a complaint about his brother from PW1 who said he had seen the assailants with a knife and nut headed stick. PW4 further testified that the appellant came to PW4's home with the knife and the bolt headed stick which PW4 took. Subsequently, PW4 testified that he recovered the robbed phone from the appellant. PW4 further testified that he did not have a grudge with the appellant and who was his brother. In the circumstances of this case, this court finds that there was direct and credible evidence linking the appellant to the offence. The evidence was adequate to sustain the convictions against the appellant as handed down by the trial court.

The second ground of appeal as submitted by counsel for the appellant was that the appellant was not properly identified by the complainants. However, the proceedings before the trial court show that PW1 testified that he knew the appellant because he was his neighbour. There is no doubt that PW1 recognised the appellant and it is the appellant who robbed the complainants. Accordingly, that ground of appeal will also fail because this was a case of recognition and not identification. The appellant was known to PW1.

In conclusion, the conviction and sentences by the trial court are upheld and the appeal is dismissed.

Signed, dated and delivered in court at **Kericho** this **Thursday, 24th October, 2013.**

BYRAM ONGAYA

JUDGE

And

G.W. NGENYE

JUDGE

In the presence of

1. for the Appellant
2. for the Respondent/State