

REPUBLIC OF KENYA

INT HE HIGH COURT OF KENYA AT MERU

CRIMINAL APPEAL NO. 85 OF 2011

FREDERICK GITONGAAPPLICANT

VS

REPUBLIC.....RESPONDENT

JUDGMENT

INTRODUCTION

A Charge of Attempted Robbery with Violence

[1] The Appellant with other two persons was charged with Attempted Robbery with Violence Contrary to Section 296 (1) of the Penal Code. He was convicted and sentenced to 7 years imprisonment. He was aggrieved by the conviction and sentence and filed this appeal.

[2] The grounds can be broadly expressed into two:

(I) It is only the complainant who testified; and

(ii) The panga allegedly recovered was never produced as exhibit.

[3] The Respondent conceded the appeal on the same reasons advance by the Appellant, but only added that there were doubts in the evidence by the prosecution which should have been credited to the benefit of the Appellant. And on that basis, the Appellant should not have been convicted. The State asked the court to allow the appeal.

COURTS' RENDITION

[4] I have perused and considered the evidence of PW1, who was the single witness in the primary case. I have observed that the Panga which PW1 alleged was in possession of the Appellant was never produced in court as an exhibit. None of the ingredients of the offence of Attempted Robbery with Violence was proved as required by the law. In such a case, the weapon with which he threatened to use violence should have been produced. One even wonders why PW1 who was a police officer could have overlooked such as important matter in a case where he was the victim. The Trial Magistrate should not have convicted on the evidence on record.

[5] I agree with the submissions made by the Appellant and the Respondent. Accordingly, I quash the conviction and set aside the sentence. The Appellant shall be set to liberty forthwith unless lawfully held in custody.

Dated, signed and delivered in open court at Meru this 22nd day of October, 2013

F. GIKONYO

JUDGE