



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MURANGA
CRIMINAL APPEAL NO. 215 OF 2013
(Originally Nyeri Criminal Appeal No. 32 of 2012)

EDWIN KAMAU MUNJIRU
APPELLANT

v

REPUBLIC
RESPONDENT

(Appeal from conviction and sentence by E.N. J. Osoro, Senior Resident Magistrate in Muranga Senior Principal Magistrate's Court Criminal Case No. 2457 of 2010 on 16 February 2012)

JUDGMENT

1. Edwin Kamau Munjiru (Appellant) and another person John Karika Maina were charged before the Muranga Senior Principal Magistrate's Court on 18th November 2010 with robbery with violence contrary to section 296(2) of the Penal Code.
2. The particulars of the robbery charge were that on 15th November 2010 accused jointly robbed Ephantus Njoroge Kamau of a mobile phone nokia 1110, Kshs 300, a pair of shoes and a jacket all valued at Kshs 4000/- and at or immediately before such robbery used actual violence on the said Ephantus Njoroge Kamau.
3. After a trial spanning about 2 years, the Appellant was convicted as charged and sentenced to death while John Karika Maina was given the benefit of doubt and acquitted under section 215 of the Criminal Procedure Code.
4. The Appellant was dissatisfied with the conviction and sentence and on 22nd February 2012 he preferred an Appeal. Some 11 grounds of appeal were set out in the Appeal. The grounds broadly related to identification, inconsistent evidence, and production/admission of exhibits but just before the hearing of the appeal, the Appellant filed an Amended Memorandum of Appeal together with written submissions. The grounds in the Amended Memorandum of Appeal related to non compliance with section 150 of the Criminal Procedure Code, possession of recently stolen property, reliance on evidence of a single witness and non consideration of Appellant's defence.
5. In dealing with an appeal such as this one the court is enjoined to reevaluate and analyse the evidence tendered in the trial court [see *Okeno v R* (1972) EA 32]. In our determination we shall reevaluate and analyse the evidence presented in the lower court while discussing the grounds of appeal as outlined and submitted by the parties.
6. This appeal will mainly turn on the doctrine of possession of recently stolen property. We will refer to the other grounds only as may be material.

Possession of recently stolen property

7. The Appellant was convicted mainly on the basis that a mobile phone which had been robbed from PW 1 Ephantus Kamau (complainant) was found with him. The material witnesses in this regard were PW 1, PW 2 Edward Irungu Mukami and PW 3, Habija Njeri Njoroge (PW 1s wife).
8. PW 1 testified that on the material day between 8.30 pm to 9.00 pm, he was hit, fell down unconscious and he was robbed of money, shoes, jacket and a mobile phone. The phone was recovered and identified.
9. PW 2 testified that at about 9.00pm while in a bar, the Appellant came and sat next to him and requested him to open the mobile phone for him (remove the sim card). He took the phone and asked the Appellant whether the phone was his but he hesitated to reply. He attempted to scroll through the phone book to find out if the phone was stolen and the Appellant took off warning him of dire consequences.
10. The witness later passed through the Appellant's mother's home and the mother told him the Appellant did not own a phone. He scrolled through the phone and saw a name Faith Nduta who he called and confirmed the phone belonged her brother, PW 1. The next day PW 2 went to PW 1 s home and met the mother and wife (PW 3) who informed him PW 1 had not returned home but had been found sleeping by a river.
11. In cross examination PW 2 maintained it was the Appellant who gave him the phone and that the Appellant ran away when he questioned him.
12. PW 3 was able to identify the phone and even scrolled her name in it. She had seen PW 2 with PW 1s phone. She could identify it because of a black cellotape used to cover it.
13. It is not in dispute that PW 1 was robbed and injured during the robbery. The Appellant has admitted such in his submissions. His complaint is the evidence connecting him with the phone. PW 2s evidence that the Appellant wanted him assist him open the phone which was established belonged to PW 1 was not challenged by the Appellant. The trial court found that as a fact.
14. The Appellant did not offer any plausible explanation as to how he came to the phone.
15. Our review of the evidence indicates that the trial court had sufficient and credible evidence to come to that conclusion. PW 1 was robbed between 8.30 pm to 9.00pm and the Appellant sought the assistance of PW 2 around 9.00pm to open the phone. This was so soon after the robbery. There was enough evidence to connect the Appellant to PW 1 robbed phone.
16. The question therefore is what value or legal significance should be given to that finding of fact in relation to the charge that the Appellant faced.
17. In *Paul Mwita Robi v R* (2010) Eklr, the Court made reference to the holding in *R v Kipkering arap Kosgei & Ar* 16 EACA 138 and held that the evidential burden shifts in a case where one is found in possession of recently stolen property to explain how he came into the property.
18. Section 111(1) of the Evidence Act is also material and applies in the present case. The section provide that

when a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any exception or exemption from, qualification to, the operation of the law creating the offence with which he is charged and the burden of proving any fact especially within the knowledge of such person is upon him.

19. The prosecution proved that the Appellant had physical possession of the stolen phone. The Appellant did not discharge or explain how he came into possession of the phone so soon after PW 1 was robbed.
20. Further, there was credible evidence that force was used on PW 1 and PW 6 Dr. David Kamau produced a P3 medical report showing the injuries sustained.
21. In our view the trial Court reached the correct finding that the Appellant was found in possession of recently stolen property belonging to PW 1 and this ground of appeal cannot succeed and is disallowed.

Evidence of a single witness

22. The Appellant challenged his conviction on the ground that the trial court relied on the testimony of one single witness PW 2. This submission cannot be correct. PW 1 and PW 6 testified on the injuries sustained by PW 1. PW 1 also testified he was robbed of a phone. PW 2 testified that the

Appellant gave him the phone to open it for him. That phone was eventually established to have belonged to PW 1 and he had been robbed of it a short while before the Appellant had it in his possession.

23. In any case under section 143 of the Evidence Act, no particular number of witnesses is required to prove any particular fact unless any other law provides to the contrary and identification per se was not an issue during the trial. A Court can rely on the evidence of a single witness to convict.

Conclusion and Orders

24. In our view all the evidence placed before the trial court was credible, cogent and, taken as a whole, was sufficient to convict the Appellant.

25. We dismiss the appeal and uphold the conviction and sentence imposed upon the Appellant.

Delivered, dated and signed in open court in Muranga on this 27th day of November 2013.

Mbogholi Msagha

Judge

Radido Stephen

Judge

Appearances

Appellant in person

Mr. Njeru, State Counsel for Respondent