



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
CRIMINAL APPEAL NO.62 OF 2009

CHARLES MURIUKI MWANGI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Appeal against the judgment in The Senior Resident Magistrate's Court at Karatina in Criminal Case No.736 of 2007 by L. Mbugua – Ag.PM)

J U D G M E N T

The appellant was charged with the offence of Robbery with Violence contrary to Section 296(2) of the Penal Code.

The particulars of the charge were that on the 25/8/2007, at Pakoni Estate in Nyeri District of the Central Province, jointly with others not before court robbed Anthony Nginga Kimimi of a mobile phone make Motorola T.190 valued at Kshs.1600 and cash of Kshs.400 all totaling to Kshs.2000/= and at or immediately before or immediately after the time of such robbery used actual violence on the said Anthony Nginga Kimimi.

The prosecution called three witnesses to prove its case. PW1 was the clinical officer who filled the P3 forms after examining the victim. He stated that the victim had a swollen forehead, bruised swollen left elbow joint.

The second witness (PW2) was the victim, who at the material time was working in a hotel at Karatina town. He states that on the 13/8/2007, the appellant whom he knows by nickname as sagana was walking ahead with 3 other men when he by passed them. The appellant held him from behind and hit him as a result of which he fell down and another person hit him on the head and legs. They robbed him of his phone and Kshs.400 and fled. He went home and reported the matter to the police. He was able to identify the appellant as they were near electricity lights. The incidence happened 5 meters from the electricity lights. He went to a doctor for a P3 report, it was prepared and returned to police who promised to get the appellant.

He later heard that the appellant had been arrested for another offence and the police called him at the police station to see whether the appellant was the one who violently robbed him and while at the station the appellant was called and PW3 recalled that he was the one. He had known the appellant before as he used to go to the hotel the victim worked. During cross-examination, PW2's statement was not shaken as he stated that he knew the appellant as Sagana and even recognized him at the police station.

The 3rd witness was P.C Josephat Mutura of Karatina police station. He was at the crime office on

26/8/2007. He went through the OB and found that the O.C.S (Nanga) had instructed him to investigate the case of robbery. He called the complainant and recorded his statement. The complainant informed the investigating officer that the appellant whom he knew, had been arrested and was in custody. The investigating officer went with victim to his office from the OB area and showed him the suspect who was being interrogated by P.C. Ndegwa on a case of chicken theft. He proceeded with investigations and then charged the appellant with robbery with violence.

In his defence, the appellant stated that on the 25th of August 2007, he was at home weeding on the coffee farm until evening. He stayed at home until the following day when he went to Karatina town and was arrested at the market mall by members of public who took him to the police station. He stayed in the cells on Monday, Tuesday and Wednesday. On the 29/8/2007 he was informed by P.C. Ndegwa that someone was complaining that he had been robbed. He was brought to court the following day on Thursday. He denied committing the offence.

The Appellant called one witness Mary Njoki Muriuki from Karindundu. She works at the salon at Karatina. On the 25/8/2007, she was with the appellant who is her husband at home working on the farm. They worked on the farm until evening and later they slept throughout the night. On cross-examination, she states that she stays with her husband's parents and siblings.

In his judgment, the learned magistrate found that the appellant was identified by the complainant as the complainant knew the appellant as alias Sagana. The appellant was known to the complainant as a regular customer at the hotel the latter worked. There is evidence that at the scene of crime there were electric lights nearby.

We agree with the learned magistrate that a conviction can be upheld on the basis of a single identifying witness. This court finds that the learned magistrate warned himself before relying on the evidence of a single witness. Though the name of the appellant is not Sagana, the appellant never rebutted the evidence that he is also known as Sagana.

After correctly finding that the appellant was properly identified and was in company of others when he committed the offence the learned magistrate went further to misdirect himself by finding that, PW2 had not stated that the assailants were armed with any weapon, which is one of the ingredients of a robbery with violence case contrary to Section 296(2) of the penal code. Consequently, he erroneously reduced the charge to that of robbery contrary to Section 296(1) and found that the prosecution had proved case beyond reasonable doubt against the accused person contrary to Section 296(1) of the penal code.

The powers of this court on appeal under Section 354 of the C.P.C include the power to alter the finding, maintaining the sentence, or with or without altering the finding, reduce or increase the sentence. This court in exercise of the above said power finds the appellant guilty of the offence of robbery with violence contrary to section 296(2) of the Penal code as the offence was committed with more than one person, and he is hereby sentenced to death. The appeal is hereby dismissed.

Dated, signed and delivered at Nyeri this 21st day of November 2013

J. WAKIAGA

JUDGE

A . OMBWAYO

JUDGE

Judgment is read in the presence of the appellant and Mr. Njue for the state. The appellant has right of appeal.

J. WAKIAGA

JUDGE

A . OMBWAYO

JUDGE