



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
CRIMINAL APPEAL NO.272 OF 2010

JINARO MARINGA WANJIKU.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Appeal against conviction and sentence in the Senior Resident Magistrate's Court at Baricho in Criminal Case No.46 of 2010 by J.N. Mwaniki – SRM)

J U D G M E N T

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

The particulars for the offence were that on the 9th day of January 2010, at Kagio township in Kirinyaga West District within Central Province jointly with another not before court robbed Henry Irungu Ngigi Kshs.1400/- and his coat valued at Kshs.800/= and immediately before the time of such robbery struck Henry Irungu Ngigi.

PW1, Mr. Henry Irungu Ngigi testified that he resides at Kagio and on the 9/1/2010 at 9.30pm he was on his way when someone called him and as he turned round, he saw it was a familiar person. The person asked for Kshs.50/= and immediately another person stepped in their midst and the two attacked him hitting him on the head as a result of which he lost consciousness temporary. He regained conscious and the two held on him and removed his court. One of the assailants according to the PW1 was the appellant. He could recognise him because of the electricity lights on the adjacent building. The appellant took Kshs.1400 and he was injured in the incidence. He went to hospital and was issued with the P3 form. The appellant talked to him during the incidence and he was a person he knew very well.

On cross-examination by the appellant the PW1 stated that he had a torch and there was adequate light at the scene.

PW2 was Corporal Evans Ambuga of Kagio police post. On the 12/1/2010 he was on duty and at about midday, the complainant went to the station and complained that he had spotted the person who had robbed him. They went to a pool table at a kiosk where the complainant pointed out the appellant and he did effect the arrest.

PW3 was P.C Raphael Rono of Kagio police post. On the 11/1/2010 at about 8.00 am he was on duty when he took over the investigation of this case. The complainant was henry Irungu who had complained of a mobile phone robbery against him on the night of 9/1/2010 by the appellant in the company of another person who hit him on the head with a heavy object and both robbed him of his coat, phone and money. They went to the scene and recovered nothing. The complainant had visible injuries

hence he gave him P3 forms. The complainant said that he knew the person who had attacked him both physically and by name.

The appellant was arrested on 12/1/2010 and booked. The attack occurred at a place adjacent to a commercial plot where there was enough light and the complainant had a torch. PW3 went to the scene of crime and confirmed that there was enough light.

PW4 was the clinical officer who completed the P3 form. The form is filled and stamped. The complainant suffered as he lost conscious as a blunt object was used against him.

After the hearing the prosecution case, the court found that the appellant had a case to answer.

The appellant in this defence stated that on 9/1/2010, he was at his place of work and left in the evening and went home and slept. On the following day he went to Mwea at his grandmother's home where he stayed upto 12/1/2010 when he was arrested at a pool table by a police officer. He was informed the following day that he had robbed one Henry Irungu. He did not know the offence he had committed but he knows that the police had earlier demanded that he becomes their informer. He had a grudge with the complainant nephew with whom he had fought earlier.

The appellant called a witness one Mrs. Mercy Wanjiru a resident of Kagio, the mother of the appellant. She did not know anything about the events of 9/1/2010. She claims that she had sent the appellant away from home to her grandmother's place because he was not in good terms with the police who demanded him to be their informer. The appellant went back home on 10/1/2010 and spent the entire day at home and also subsequent day. He was arrested on 12/1/2010 while playing pool. On cross-examination, she reiterated that the appellant was not at home on 9/1/2010.

The trial court heard the persecution witnesses and considered the evidence adduced and also heard the appellant and considered the evidence adduced and found that the appellant and the complainant know each other very well. They met at night on 9/1/2010 in the company of another person on a well lit scene where the appellant borrowed from the complainant Kshs.50. Despite giving him Kshs.50, the appellant became violence.

The honourable trial magistrate found that there was no evidence of between the complainants nephew and the appellant. The court found that the evidence adduced proved that the appellant stole from the complainant. We do agree with the honourable court that there was evidence that the appellant stole from the complainant, however we do not agree with his finding that the circumstances surrounding the theft did not amount to capital robbery.

What is capital robbery? Section 296(2) provides that if the offender is armed with any dangerous or offensive weapon or instrument, is in the company of one or more other person or persons or if, at or immediately before or immediately after the time of the robbery he wounds, beats, strikes or uses any other personal violence to any person he shall be sentenced to death.

We find that the appellant was in company of one other person and caused actual body injury to the appellant and therefore the evidence on record sustained a charge of robber with violence contrary to section 296(2) of the penal code and do find the appellant guilty of the said offence of robbery with violence and do sentence him to death. The appeal is otherwise dismissed.

Dated, signed and delivered at Nyeri this 20th day of December 2013

J. WAKIAGA

JUDGE

A . OMBWAYO

JUDGE