

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

HCCRA NO. 12 OF 2013

INEYA MUSWANGA alias BODO APPELLANT

VERSUS

REPUBLICRESPONDENT

(From the original conviction and sentence of G. A. Mmasi Ag. SPM, at Vihiga Court, Criminal Case No. 487 of 2012)

JUDGEMENT

The appellant herein Ineya Muswanga alias Bodo was charged before the lower court with the offence of robbery contrary to Section 295 as read with Section 296(2) of the Penal Code. Particulars of the offence are that, on the 18th day of May 2012 at Bendera market in Vihiga County of Western Province, jointly with others not before court while armed with dangerous weapons namely; iron bars and knives robbed Dalton Asava Munganyi of motor cycle Registration No. KMCM 056Y, make Kingbird, frame number LRYBCJLB8A0800091, Engine Number 156VM18100091 valued at Ksh 73,600/= the property of Jane Mbone, a mobile phone make Nokia 101 valued at Ksh 3,000/= and cash Ksh 2,500/= the property of Dalton Asava Munganyi and at immediately before the time of such robbery, wounded the said Dalton Asava Munganyi.

The appellant was jointly charged with another who was convicted and sentenced for the offence of handling stolen property.

The prosecution case was that, the complainant was hired by the appellant to take appellant to Chavakali. The complainant is a *boda boda* rider. It was about 7 pm but not dark and so the complainant was able to see the appellant well. They set off to Chavakali and on reaching there, the appellant asked complainant to take him to Bendera market. On reaching there, the appellant alighted and hit the complainant with a metal bar injuring him. The complainant lost consciousness and came to his senses 1½ days later when he was in hospital. In the meantime, the motor bicycle that was robbed from complainant was recovered from the appellant's who had intended to sell it to the policemen who pretended to be buyers. The appellant was arrested and was later identified on an identification parade by the complainant. His P3 form was produced in court as exhibit. PW5 is the one who conducted an identification parade on the appellant and he produced the parade form as exhibit.

Put on his defence, the appellant denied the offence and said he was arrested while at his home and was surprised to be charged with this offence of robbery.

At the end of the hearing, the trial court found the appellant guilty of this charge of robbery on the grounds that the appellant was positively identified by the complainant and that the appellant was carrying a metal bar wrapped in a green paper bag which metal bar was recovered from the house of the appellant.

The appellant now appeals before this court on his conviction and sentence on the grounds that the identification parade conducted did not comply with police standing orders as the complainant was known to the appellant. He also appealed on the ground that the prosecution evidence was contradictory.

The issues for determination then based on these grounds are:-

1. **Whether the identification parade was conducted properly.**
2. **Whether there were contradictions in prosecution evidence.**

On 1st issue, the PW1 told court he had seen the appellant before in the area but in the evidence he never mentioned the robber as one Ineya. It was only in cross examination that PW2 mentioned that the robber was one Ineya and this was never recorded in her statement. The assertion therefore that the parade was a sham on this ground is not true. There is also the issue of the position of the appellant on the parade which does not appear in the proceedings as stated by the appellant. In the circumstances, we find that the parade was correctly done without flouting any rule and is therefore authentic.

On the issue of contradictions, there were no material contradictions in prosecution's evidence which would warrant overturning the prosecution's case. We therefore find that the conviction and sentence of the appellant was proper and we confirm it and dismiss this appeal accordingly.

DATED THIS 11TH DAY OF DECEMBER 2013

SAID J. CHITEMBWE

HELLEN S. WASILWA

JUDGE

JUDGE