



REPUBLIC OF KENYA

IN THE HIGH COURT

AT KAKAMEGA

CRIMINAL APPEAL 194 OF 2009

*(An Appeal against both conviction and sentence from the*

*Chief Magistrate's Court at Kakamega in Criminal*

*Case No. 2150 of 2009 [J. NDUNA, SRM])*

STANLEY KHAKOBI SONGA ..... APPELLANT

VERSUS

REPUBLIC ..... RESPONDENT

### JUDGMENT

The appellant, **STANLEY KHAKOBI SONGA**, was charged with the offence of robbery with violence contrary to Section 296 (2) of the Penal Code.

The particulars of the offence were that on the 24<sup>th</sup> day of December, 2008 at Simuli village, Sirigoi Sub-location in Kakamega North District within Western Province, with others not before court, being armed with dangerous weapons namely swords and rungunus robbed GEOFFREY KHAEMBA of one pair of slippers, one match box, 2 cigarettes, and cash ten shillings and at the time of such robbery used actual violence on the said GEOFFREY KHAEMBA.

The appellant was convicted of the offence and sentenced to death. The Appellant was dissatisfied with both the conviction and sentence and appealed to this court.

In his petition, the appellant raised several grounds of appeal. The said grounds of appeal may be summarized as follows:-

- *That the appellant was convicted on evidence that was uncorroborated, contradictory, fabricated and insufficient evidence and did not prove the charge to the required standard.*

- *That his constitutional right to a fair trial as provided for under S.77 of the Constitution was breached in that he was not supplied with the statements of the Prosecution witnesses.*
- *That the trial magistrate failed to see that this was a fabricated case.*
- *That the real problem between the parties was a land dispute.*

The appellant urged the court to allow the appeal, quash the conviction and set aside the sentence.

During the hearing of the appeal, the appellant submitted written submissions to the court. Mr. Orinda for the State made oral submissions and opposed the appeal. He submitted that the people involved in the robbery were known and that the appellant did not get the chance to escape. We have duly considered the said submissions.

The facts of the prosecution case were that on the 24<sup>th</sup> December 2008 at about 7.00 p.m., the complainant, GEOFFREY KHAEMBA WANJOFU was on his way home. He found three people standing by the roadside. Among these people was the appellant. The complainant knew all the three people as his neighbours. He identified the appellant as one of them. The three people were armed with long knives and a wooden plank. The appellant had a nylon sack with him. The complainant was attacked and ordered to give out money. The complainant was cut on the left hand and on the right elbow with the knife. The appellant held the sack on the face of the complainant. The complainant struggled with the appellant and held on him and dragged him to the complainant's home and did not let him go until members of public arrived and the appellant was escorted to Kakamega Police Station. The complainant further stated that during the attack he was robbed of Kshs.10/=, two cigarettes, a pair of slippers and one matchbox.

The complainant was treated at Kakamega District Hospital and a P3 form filled. The appellant was subsequently charged with the offence herein.

The appellant in his defence gave sworn evidence. His case is that he was on his way home at about 7.00 p.m. when he was arrested by five members of a vigilante group and escorted to the home of Richard Wanjovu and then to Kakamega Police Station where he was locked up. He was then charged with the offence of robbery with violence which he denied.

This being a first appeal, it is the duty of this court to re-evaluate the evidence and draw its own conclusions (*see OKENO V R. [1972] EA 32*).

In his evidence, the complainant, PW1, Geoffrey Khaemba Wanjofu identified his attackers as Omete Ngwata, Stanley Songa, the appellant and one Michael Singenge. According to the complainant he knew the appellant and the other two as his neighbours. The complainant in his evidence described the attack. It is the complainant's evidence that he was attacked with a knife and a plank of wood and a sack placed on his face. The complainant described his injuries as being hit on the mouth and nose and cut on the right finger of the left hand and cut on the right elbow. The complainant's blood soaked clothes were produced before the trial court as exhibits.

PW2, **RICHARD WANJOVU MASINDE** and PW3 **STEPHEN WANJOVU** were attracted to the scene by screams. According to their evidence, PW2 and PW3 have given a similar account of evidence on how they found the appellant and the complainant struggling with the complainant bleeding from the nose and hand. PW2 and PW3 also stated that the complainant was holding a blood stained sack. They identified the sack and the blood stained clothes that the complainant was wearing at the material time. PW2 and PW3 pointed out that they hailed from the same village as the appellant and the complainant and therefore knew each other very well. The complainant's evidence that he held on to the appellant and did not let him go is corroborated by PW2 and PW3.

The appellant in his defence has stated that he was arrested by a vigilante group and then taken to the home of one Richard Wangovu Khaemba then he was escorted to the Police Station together with the

complainant. The defence does not give any reasons for the arrest. However, in his grounds of appeal the appellant has raised the issue of a land dispute between him and the complainant terming the prosecution evidence as fabricated by witnesses who were members of the same family. This however appears to be an afterthought. The issue of the land dispute was not raised in the defence. The complainant denied having differed with the appellant. There were no issues of any difference raised between the appellant and PW2 and PW3.

We have no doubts that the complainant was assaulted. His blood soaked clothes were produced as exhibits. PW4, ETIANA FRANCIS, the Clinical Officer who examined the complainant testified that the complainant had a swollen head with a cut at the back of the head, injured chest and cut on the right arm and left ring finger. The P3 form was produced as an exhibit.

PW5, PC WANJIRU, the Investigating Officer gave evidence which basically summarized the evidence of PW1, PW2, PW3 and PW4.

The total sum of the prosecution evidence is that the appellant was caught in the act and had no chance to escape. There is no risk of mistaken identity. Although the time was about 7.00 p.m., it is clear from the evidence of PW1, PW2 and PW3 that the complainant (PW1) held on to the appellant throughout. The defence raised did not cast any reasonable doubts on the prosecution case. The evidence of the prosecution witnesses is corroborated without any material contradictions.

One of the grounds of appeal raised by the appellant is that he was not accorded a fair trial. The appellant stated that the prosecution did not supply him with copies of statements of witnesses. We have perused the record of the lower court and find no application made by the appellant to be supplied with copies of statements of the prosecution witnesses.

The value of the properties the complainant was robbed of was minimal. According to the complainant he was robbed of Ksh.10/=-, two cigarettes, slippers and a matchbox. However, the attack on the complainant was vicious and caused him harm. The attack was by three assailants who were armed with crude weapons. The ingredients of the offence of robbery with violence were proved.

The conviction of the appellant was within the law. The appeal has no merit and we dismiss the same. We uphold the conviction and the sentence imposed upon the appellant by the trial magistrate.

*Delivered, dated and signed at Kakamega this 7<sup>th</sup> day of June, 2012*

**SAID J. CHITEMBWE**  
**J U D G E**

**B. THURANIRA JADEN**  
**J U D G E**