



REPUBLIC OF KENYA

High Court at Nyeri

Criminal Appeal 190 of 2011

JACOB GITHINJI

MACHARIA.....APPELLANT

Versus

**REPUBLIC.....RESP
ONDENT**

*(arising from the judgment of Hon. J.N. Nyaga Senior Principal
Magistrate at Nanyuki in Criminal Case No. 1922 of 2010)*

JUDGMENT

The appellant was charged with the offence of robbery with violence contrary to section 296(2) of the Penal Code.

He also faced the alternative charge of handling stolen goods contrary to section 322(2) of the Penal Code.

He was tried convicted and sentenced to death on the count of robbery with violence.

Being aggrieved by the said conviction and sentence the appellant filed this appeal.

At the time of trial before us the appellant who was unrepresented submitted amended grounds of appeal and written submissions which he relied upon.

This appeal was opposed by Mr. Kaigai on behalf of the DPP on the ground that the robbery was established by the application of the doctrine of recent possession under section 111 of the Evidence Act and that stolen items were found in possession of the appellant twelve hours after they were stolen.

He submitted that the death sentence imposed upon the appellant was and is lawful.

From the appellant's grounds of appeal and written submission the main issues for our determination are whether the death sentence imposed on the appellant is constitutional and whether the court properly applied the doctrine of recent possession in convicting the appellant.

On the issue of the legality of the death sentence this court has ruled before that the same is constitutional as it is imposed by a lawful provision of the statute.

The other constitutional issue raised by the appellant is that he was held for 13 days before being arraigned in court. We note that under the law the maximum period of time allowed then was 14 days

since the appellant was charged with a capital offence and therefore hold that there was no violation of the appellant's constitutional rights.

On the issue of the evidence tendered before the trial court P.W.8 stated that on 8th October 2010 he was informed by CPL Kirimi that there had been a series of robberies the previous night. That they received information that there were people hawking around some electronic goods. As they walked around they met with the appellant in the corridor between two buildings and he was carrying a paper bag in which they recovered 2 DVDs and 3 remote controls. When asked where he had gotten the said items he said that he was a technician and that he was going to repair them at his workshop. When he was asked to show the witness the workshop and the owner of the goods he changed the story and stated that he had a house at the old market. That when the house was searched nothing was found thereat.

That he was later directed to the house of the second accused that they found two TVs.

The appellant was identified by Elizabeth Nyaguthii Mwangi at an identification parade conducted by P.W.9 CL. Chrispus Mwandine.

When put on his defence the appellant offered to give in unsworn statement. He stated that the identification parade was not properly conducted as he was the only one who had long hair at the parade.

We have noted that though the burden of prove is always upon the prosecution the appellant did not offer any evidence as to how he came into possession of the DVD which were stolen from the complainant's house and that he was found with the said items 12 hours after they were stolen. We therefore find that the trial court was right in applying the doctrine of recent possession in convicting the appellant and therefore find no fault with the conviction and sentence of the appellant.

We therefore find no merit in the appellant's appeal herein and dismiss the same.

Dated and delivered at Nyeri this 18th day of October 2012.

J.K. SERGON
JUDGE

J. WAKIAGA
JUDGE

Miss Maundu for the State
Jacob Githinji Macharia in person
Read in open court.

J.K. SERGON
JUDGE

J. WAKIAGA
JUDGE