



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL APPEAL NO.182 OF 2010

ISAAC KIPTOO KOROS.....APPELLANT

VERSUS

REPUBLICRESPONDENT

[An Appeal from original conviction and sentence in Kabarnet SNR.R.M.CR.C.NO. 317/2000 by Hon. H. M. Nyaga, Principal Magistrate, delivered on 26th May 2010]

JUDGMENT

The appellant was charged with **obstructing a police officer contrary to section 253 (b)** of the **Penal Code** and also with **incitement to violence and disobedience of the law** contrary to **section 96(c)** of the **Penal Code**. At the trial, evidence was led that police officers accompanied officials of the Copyright Society of Kenya to Mwananchi “C” Hotel to confirm compliance with copyright laws.

As **P.W.1 Channelle Angatia Beru (Beru)** a licensing officer was finding out from an attendant whether the hotel had a licence for the music, the appellant surged forward saying loudly that the officers were thugs. This attracted members of the public and created tension. Beru then introduced himself and the tension eased.

Sgt. Peter Sagala confirmed these events but added that the appellant referred to them as comen on the loose and bogus officers; that even after introducing himself by producing his official card, the appellant continued inciting members of the public. The officers retreated. The following day, the appellant was arrested and charged as explained.

In his defence the appellant denied the charges and explained that on the day he was arrested, he was reading a newspaper at Kabarnet when a police officer arrested him claiming he had obstructed police officers on duty.

The learned trial magistrate found, correctly, that the prosecution evidence placed the appellant at the scene. That left the question whether, in the circumstances of the case, the appellant willfully obstructed police officers or any person acting in aid of the officers and whether he (the appellant) without lawful excuse uttered words calculated to prevent or defeat by violence or by other unlawful means the enforcement of the law.

The learned trial magistrate was persuaded that the prosecution evidence proved to the required standard that the appellant committed the offences charged. Upon convicting him, the learned magistrate

sentenced the appellant to eighteen (18) months probation.

Being aggrieved, the appellant has challenged both the conviction and sentence in this appeal on eight (8) grounds which I have distilled as follows:

- i) that the charges were not proved
- ii) that the prosecution evidence was contradictory
- iii) that the learned magistrate shifted the burden of proof on the appellant
- iv) that the appellant's defence was not considered
- v) that the sentence was harsh

Counsel for the respondent did not, correctly, support the conviction and sentence for the reason that there was reasonable explanation why the appellant conducted himself in the manner he did.

I have considered the appeal and the submissions. For the offence of obstructing a police officer to be proved, it must be shown that the accused person willfully obstructed. Similarly, the offence of incitement to violence is committed only if it is shown that the accused person's conduct was without lawful excuse.

It was incumbent upon the prosecution to show in the first place that the appellant uttered words which were calculated to prevent or defeat by violence the enforcement of the law. There was no unanimity in the prosecution evidence of the actual words the appellant uttered.

According to Beru, the appellant said "*hawa ni wakora*" (these are thugs). But according to Sgt. Sagala, the appellant said they were "*conmen on the loose.*" that they were "*bogus officers out to solicit money from wananchi.*" Which words did the appellant utter?

Secondly, according to Beru, the crowd and the appellant calmed down after he introduced himself. But Sagala, once again contradicted this maintaining that the appellant did not heed.

I come to the conclusion that the appellant acted reasonably considering that the officers were not in uniform and also did not introduce themselves before embarking on the inspection.

For these reasons, the appeal is allowed conviction quashed and probation sentence set aside. The appellant is set at liberty forthwith unless otherwise lawfully held.

Dated, Delivered and Signed at Nakuru this 28th day of February, 2011.

**W. OUKO
JUDGE**