



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL APPEAL NOs.618 & 620 OF 2007

IBRAHIM ANAKEYA.....1ST APPELLANT
DOUGLAS NYANGWARA MAOBE.....2ND APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(From the original conviction and sentence in Criminal Case No.4657 of 2006 of the Chief Magistrate’s Court

at Makadara by Miss Karani - Senior Resident Magistrate

JUDGEMENT

The two appellants were jointly charged with the offence of robbery with violence contrary to section 296(2) of the Penal Code, the particulars being on the 15th day of August 2006 at Prime Tech Industries along Nanyuki road in Nairobi jointly with others not before court while armed with offensive weapons namely crow bars, stones and rungun robbed Moses Mulinge Muthembwa of various items valued at Kshs.190,555.02 and immediately before or immediately after the time of such robbery used actual violence to the said Moses Mulinge Muthembwa. After full trial they were convicted and sentenced to death hence this appeal. The facts of the case are that on the material day, the complainant was guarding the premises of Prime Tech Industries when a group of people jumped over the fence and immediately attacked him. The complainant was subdued, tied and placed in a room.

The complainant gave evidence as PW3 and he stated that a group of robbers jumped over the gate, immediately tied him while they ransacked everything within the compound where he was guarding. The robbers started removing things which were left inside a car parked within the compound. It was the evidence of PW3 that the robbers removed everything that was inside the car and also took the wheels of the said car. He contended that he was able to identify the two appellants in court as the ones who jumped over the gate. On cross examination he maintained that it was the 2nd appellant who tied him up and kept asking him for the hand alarm which he did not have.

PW2 Cpl Lawrence Mwongela of CID Embakasi stated that while on patrol with other police officers along Lunga Lunga road they got information of suspicious persons who were operating along Nanyuki road. They laid an ambush at the junction of Airport and while waiting they saw a car going into the compound of Prime Tech Industries and loading things. They followed the said car and intercepted it near Sinai slums. They arrested the driver who led them to a place where they found the 1st appellant with various items which he did not explain. They then went to Prime Tech with a taxi driver and on knocking the door the 2nd appellant opened the gate for them. It is the evidence of PW2 that the 1st appellant had no explanation as to how and where he got the items that were found in his possession. PW2 also confirmed that the person who opened the gate for them at Prime Tech Industries was not an employee. The officers also found PW3, the watchman locked up in a room. They arrested the 1st and 2nd appellant and took them into police custody.

PW4 Harrison Thuo Mugo a taxi driver stated that on the material day he was called by one Jairo to pick certain items from Prime Tech Industries. Together with the 1st appellant he went to the premises of Prime Tech Industries where the gate was opened by the 2nd appellant. PW4 drove in and the boot of his car was loaded with various items. He then drove to Huduma Bora Clinic with the 1st appellant and dropped the items he earlier picked from the premises of Prime Tech Industries. As he was returning, he met police officers and on being questioned, he led them to the place where he dropped the items and the 1st appellant. He also contended that he went with the police officers to Prime Tech Industries where the 2nd appellant opened the gate for them.

PW5 a driver at Prime Tech Industries testified to have purchased stationery at Woodley Stationers on 15th August 2006 for and on behalf of Prime Tech Industries. He stated that when he reached the offices of his employer he found the offices had been locked. He then locked all the items inside the car and left for the day with the car keys. The next day when he reported to work, he found the car tyres had been stolen together with all the items he stored therein. He later went to the police station where he identified the items that were allegedly found on the 1st appellant.

PW1 a director of Prime Tech Industries testified to have sent PW5 to purchase various items that were allegedly stolen from the car.

The two appellants gave unsworn testimony and denied the charges that were leveled against them. The trial court convicted the appellants on the basis that the evidence on record was overwhelming. In convicting the appellant the trial court had this to say;

“I found the prosecution case to be extremely consistent and well corroborated. It is by what I term a twist of fate that PW2 Corporal Lawrence Mwongela followed the taxi carrying the 1st accused and recovered various items which were positively identified by PW5 who was the driver who had purchased the various pieces of stationery together with the wheel of the motor vehicle he had been driving.

PW1 Oraly Narji satisfactorily proved the items with the 1st accused belonged to Prime Tech as he produced receipts for the same to wit pexh 16a and b which evidence was corroborated by PW5 who had purchased the same.

I note both accused have attempted to distance themselves from the scene of crime. However, I found PW3 the watchman’s evidence was corroborated by that of PW4 the taxi driver and both testimonies positively identify the 1st accused as having been at the scene as the taxi driver picked the 1st accused and drive him to Prime Tech whereas PW3 maintains he was amongst those who had jumped over the fence initially and presumably left at 8.30 a.m. Both PW3 and PW4

impressed me as truthful persons more so PW3 who appeared extremely eager to merely narrate his ordeal on the material night. No blood has been demonstrated to justify the case being fabricated against the 1st accused. His unsworn defence has not cast any doubt whatsoever on the prosecution case. During his cross-examination of the prosecution witnesses he simply did not lead any evidence to show he was in a hospital.”

As was rightly stated by the trial court, a robbery did occur on 15th August 2006 at the premises of Prime Tech Industries in Nairobi where various items which were produced as exhibits were stolen. It is clear that a few minutes after the said robbery, police intercepted a motor vehicle driven by PW4 which was suspected to have conveyed stolen items. On being arrested and interrogated, PW4 confirmed that he had ferried goods from the premises of Prime Tech Industries. He then led police to the place where he dropped one of the robbers together with the stolen items.

It is PW4 who led police to the recovery of the stolen items and the arrest of the 1st appellant. He also directed police to the place where he had earlier removed the goods from. On reaching the said premises, police knocked the gate and the person who opened the gate for them was the 2nd appellant. It was confirmed by all the prosecution witnesses that the 2nd appellant was not an employee of Prime Tech Industries. On entering the premises, police found a vehicle that had been vandalized by the robbers and a watchman tied in one of the rooms.

From sequence of events and circumstances, the appellants did not offer any explanation why they were found with stolen items and in premises where the items were stolen from. The law is that a person found in possession of recently stolen items, is presumed in the absence of any plausible explanation, to be either the thief or the handler of the stolen items, therefore the doctrine of recent possession is applicable in the circumstances of this case against the 1st appellant. There is also no doubt that both PW3 and PW4 identified the appellants at a very close range, that the light and other conditions for proper identification were present. We appreciate that no identification was carried out but nevertheless PW4 is the one who led police to the arrest of both appellants. In our view the time lag between the time of the robbery and the recovery and arrest was so proximate and sufficient to found a conclusion that the appellants participated in the subject robbery. The 1st appellant was found in possession of items stolen from Prime Tech Industries while the 2nd appellant was arrested from inside the premises of the said company in a suspicious and unexplained manner. We therefore think the trial court proceeded in accordance with the law and rightly convicted both appellants.

All in all, and on re-evaluation of the evidence we are satisfied that the evidence of PW1, PW2, PW3, PW4 and PW5 was credible and that there is no justification for interfering with the findings of the trial court. In short we are satisfied that the evidence on record clearly implicated both appellants as the ones who attacked PW3 on the material day and time. There is also no doubt in our mind that the trial court correctly analyzed all the evidence in detail and came to the correct conclusion that the appellants are guilty as charged. We think both appeals have no merit. We uphold the conviction and affirm the sentences against both appellants.

Dated, signed and delivered at Nairobi this 19th day of May 2011.

J. KHAMINWA
JUDGE

M. WARSAME
JUDGE