



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL APPEAL NO. 281 OF 2009

WILLIAM KIMANZI ISIKA ALIAS CHIPA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(From the original conviction and sentence in Criminal Case No.7310 of 2004 of the Chief Magistrate's Court at Kibera

by Mr. Kiarie W. Kiarie – Ag. Senior Principal Magistrate)

JUDGMENT

The appellant, **WILLIAM KIMANZI ISIKA, ALIAS CHIPA**, was convicted on 2 counts of Robbery contrary to **section 296 (1) of the Penal Code**. He was then sentenced to a total of 10 years imprisonment.

When the appeal first came up for hearing, the respondent issued a Notice to the appellant, that they would ask the court to set aside the conviction and substitute it with a conviction pursuant to **section 296 (2) of the Penal Code**.

After giving due consideration to the Notice, the appellant decided that he would be better-off withdrawing the appeal against conviction. However, as against the sentences, the appellant pleaded with the court to order that they should run concurrently, instead of consecutively.

His plea was premised on the understanding that the two incidents occurred at the same time and place. He therefore believed that the sentences should run concurrently.

The particulars of the charge sheet are as follows;

‘WILLIAM KIMANZI ISIKA ALIAS CHIPA: On the 4th day of September 2004 along Kitengela Road, next to Onyonka Estate, Langata, within Nairobi Area Province, jointly with others not before court, while armed with dangerous weapons namely stones, pangas and runigus, robbed JOSHUA KIMATHI KABURU, one wrist-watch make Seiko five, a pair of shoes and a wallet containing cash KShs.500/; all valued at KShs.5,000/, and at or immediately before or immediately after such robbery, used actual violence to the said JOSHUA KIMATHI KABURU.

COUNT TWO

ROBBERY WITH VIOLENCE CONTRARY TO SECTION 296 (2) OF THE PENAL CODE.

WILLIAM KIMANZI ISIKA; On the 4th day of September 2004 along Kitengela Road, next to Onyonka Estate Langata, within Nairobi Area Province, jointly with others not before court, while armed with dangerous weapons, namely stones, pangas and runqus, robbed JANE WANJIRU of a leather jacket and cash KShs.1,300/-; all valued at KShs.3,300/-, and at or immediately before or immediately after such robbery, threatened to use actual violence to the said JANE WANJIRU.”

From the evidence tendered by the prosecution, the two complainants were walking together, when they were accosted by three armed men. **PW 2** was hit on the side of his head, using a stone. The wound required stitches. He received treatment at the Forces Memorial Hospital.

PW 3 was slapped, but she did not suffer any physical injuries.

Each of the complainants was robbed, therefore the prosecution was right to have preferred two counts of robbery, against the appellant.

Having convicted the appellant, the trial court sentenced him;

“to serve ten (10) years imprisonment.”

The record does not indicate whether that is the sentence relating to one or the other count, or both counts.

On the other hand, there is nothing on record to indicate that the appellant was imprisoned for 5 years, for each of the counts, as he has asserted. There is only one sentence of 10 years imprisonment.

Meanwhile, the penalty prescribed by **section 296 (1) of the Penal Code** is 14 years imprisonment. Therefore, a sentence of 10 years imprisonment for each of the 2 counts would be lawful.

By dint of **section 14 of the Criminal Procedure Code**, sentences are to run consecutively unless the court specifies that they should run concurrently.

However, the normal practice in sentencing is to order that sentences for two or more offences flowing from the same set of facts should run concurrently.

Ideally, if the issue of sentencing was raised promptly, this court could have referred the matter back to the trial court, with instructions that it indicates whether or not it consciously decided to have the two sentences run consecutively. But as it is already more than 4 years since the sentences were handed down, I believe that the most prudent course of action, that will accord with the interests of justice, is to have this court make a determination in that respect. I do therefore hereby order that the sentences of 10 years imprisonment for each of the two counts, in respect to which the appellant was convicted, should run concurrently.

Finally, the appeal against conviction is marked as withdrawn.

Dated, Signed and Delivered at Nairobi, this 18th day of May, 2011.

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F.A. OCHIENG

JUDGE