



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAKURU

Criminal Revision 3 of 2009

SIMON SUKORIA CHEMONGES.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

SIMON SUKORIA CHEMONGES was with another charged with demand property with menses contrary to Section 302 of the Penal Code. He was charged that on 27th September 2006 in Naivasha District within Rift Valley Province jointly with others not before court he demanded with menses Kshs.120,000/- from Joseph Gichoya Kimani.

They pleaded not guilty to the charge but after trial before the Principal Magistrate at Nakuru the co-accused was acquitted but the applicant was convicted and sentenced to serve two years imprisonment. He has, through counsel, in this and Revision Case No.6 of 2010 sought a revision of his conviction and sentence on the ground that it is his co-accused who was found guilty and that he was himself convicted and sent to prison by mistake.

The applicant's said contention is based on the ground that he was initially separately charged in Criminal Case No. 1873 of 2007 while the co-accused was also separately charged in Criminal Case No. 3743 of 2007. On 30th October 2007, the two cases were consolidated. In counsel's view, and given the fact that the applicant was the first to testify when they were put on their defence, he was the first accused in the lower court and not the second accused whom the trial court found guilty.

I find no merit in this contention. Although I have not been availed with the lower court record, the charge sheet has the applicant as the second accused. It is clear from the judgment that the learned trial magistrate carefully analysed the evidence before him. The complainant, PW1, stated that he received a telephone call from one Yusuf, an inmate at Kamiti Maximum Prison, Nairobi that unless he paid a sum of Kshs.200,000/- he was going to be killed. He informed the police of the demand and threat and an ambush was laid. He traveled to Kamiti Prison and when he was taken to the said Yusuf, the latter directed him to give the money to a brown man at a restaurant near the gate by the name David. With police the complainant went to that restaurant and a man answering that description came forward and demanded the money from the complainant. Thereupon the police bounced on and arrested him. He was later identified as a prison warder attached to Kakamega Prison but was at that time involved in sports at Ruiru GK Prison.

The details about the applicant's arrest are not disputed. Like the trial magistrate, I ask: if the applicant was not involved in the scheme to exhort money from the complainant, how come he went forward to demand money from him at the restaurant? What reason would the complainant have to want to put into

trouble somebody he did not know? What reason would the police have to arrest somebody they did not know?

The fact that the applicant was the first to be charged with the offence and that he testified as DW1 does not, in my view, change anything. The learned trial magistrate's judgment is quite detailed and identified the applicant by name besides referring to him as accused two. And as I have said the applicant was actually accused two on the consolidated charge sheet.

For these reasons there is no warrant for reviewing the lower court decision. Consequently I dismiss this application.

DATED and delivered this 26th day of January, 2010.

**D.K. MARAGA
JUDGE.**