



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Criminal Appeal 524 of 2007

PETER NJOROGE NJUGUNAAPPELLANT

VERSUS

REPUBLICRESPONDENT

**(From the original conviction and sentence in Criminal Case No. 888 of 2006 of the
Principal Magistrate's Court at Kikuyu by E. Ominde – Ag. Principal Magistrate)**

JUDGEMENT

The appellant was charged with unnatural offence contrary to section 162(a) of the Penal Code that on 18th day of July 2006 at [particulars withheld] Trading Centre in Kiambu District within Central Province jointly with others not before court had a carnal knowledge of D.M.N against the order of nature.

PW1 Dr. Mwaura examined the complainant on 22nd July 2006 as requested by Kikuyu Police Station and after examination he reached the conclusion that the injuries suffered by the complainant were consistent with sodomy. He filled the P3 form which was produced as exhibit 1.

PW2 IP Maurice Okul of Kikuyu Police Station conducted an identification parade on 29th July 2006 after he was requested by the Investigating officer to do so. He lined up 8 members of the parade and requested the appellant to stand between No. 3 and No.4. The appellant was then identified by the complainant and the ID parade form was produced as exhibit No.2.

PW3 PC Alexander Miriti received a report on 19th July 2006 that the complainant had been sodomized on 18th July 2006 by a group of people who attacked him on his way to his home. The report was that the complainant knew some of the people who attacked him on the material night and he was found unconscious the following day. He then referred the complainant to Nairobi Women Hospital for

treatment and investigation. He also confirmed that the appellant was arrested and handed over to him on 20th July, 2006 by the members of the public. He then arranged an identification parade and the filling of the P3 form.

The father to the complainant gave evidence as PW5 and recounted how he found his son unconscious between two buildings within [particulars withheld] Trading Centre on 9th July 2006. He then took him to Nairobi Women Hospital and later Kikuyu Police station where he made a report. The following day he was informed by his son that he was accosted by six men and one of them was the appellant in this case. The appellant was then later arrested and charged with the relevant counts.

PW6 Cpl. Robert Wario arrested the appellant after he found him being beaten by members of the public.

After he was put on his defence the appellant denied the charges but confirmed that he knew the complainant and that he was arrested on 20th July 2006 by a group of people who alleged that he had sodomized the complainant.

No doubt the complainant was attacked on the material night as he was approaching their home by a group of people who seriously injured him and in the process sodomized him. The P3 form filled by Dr. Kung'u confirmed that the complainant was sodomized and the injuries were consistent with an act of sodomy. The evidence of the complainant is that he was accosted by a group of six people who sexually assaulted him without any warning and without any basis. He said that he knew one of the attackers and the person he identified as part of the group is the appellant.

The trial court after analyzing the evidence of the prosecution and the defence by the appellant, found the evidence of the complainant credible despite intense cross examination by the defence. The trial court was also mindful that it was convicting the appellant on the evidence of a single witness and as a result warned itself of the dangers of convicting on the basis of a single witness. The trial court found the evidence of the complainant consistent and that he knew the appellant before the incident. The trial court found the evidence of PW1 on identification of the appellant at the Kikuyu Police Station was quite satisfactory and that the appellant was among the six men who sodomized the complainant on the material night.

It is the case of the appellant that he was convicted against the weight of the complainant who gave very contradictory and uncorroborated testimony and that the court failed to appreciate that the identification was improperly done with the complainant having had an opportunity to see him at Nderi market before the parade. It is also the submission of Mr. Arum learned counsel for the appellant that the appellant was convicted on the evidence of a single witness which is unsafe in the circumstances of this case. And that there is no direct evidence to connect the appellant to the said offence.

I have considered the evidence tendered by the prosecution and it is clear in my mind that the appellant was convicted on the evidence of the complainant and that evidence has been termed as an evidence of a single witness which require further corroboration. The complainant testified that the offence was committed in a place that was well lit by electricity. He said he was able to identify the appellant as one of the persons who attacked him and subsequently sodomized him. He was able to pick him out from an identification parade properly conducted by PW2. In my mind therefore the identification of the appellant was free from error or mistake. The appellant was properly identified in an identification parade after the complainant had given his names to the relevant authorities and in particular to his father who gave evidence in that context. Therefore, there is no room for mistaken identity and that the conviction entered by the trial court is consistent with the guilt of the appellant. PW1 the doctor examined the complainant and concluded that the features that were found on the complainant were consistent with sodomy. That evidence was well corroborated by the complainant's allegation that he was

sodomized. It is evident therefore that the complainant suffered serious injuries due to the acts and omission by the appellant.

The trial court which had the opportunity of observing the demeanor of the witnesses and concluded that the complainant was a credible witness who recounted the incident of the material night to the best of his ability and to the satisfaction of the court. The trial court duly warned itself of dangers of relying on the evidence of a single witness on the ground that the evidence tendered by the complainant was consistent and credible. In the circumstances there is no basis to interfere with the conviction entered by the trial court. I am satisfied that the prosecution proved its case beyond reasonable doubt and that the appellant was convicted properly and on sufficient evidence. The appeal against conviction has no merit and it is hereby rejected.

On sentence, the appellant was sentenced to serve 7 years imprisonment while section 162(a) provides for 21 years imprisonment. I therefore, think there is no basis for me to interfere with the lawful sentence by the trial court. In the premises the appeal against sentence also fails.

Dated, signed and delivered at Nairobi this 13th day of January 2010.

M. WARSAME

JUDGE