



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET
CRIMINAL APPEAL 37 OF 2010

REPUBLIC:.....RESPONDENT

VERSUS

DAVID KIPSANG RONO:.....APPLICANT

JUDGMENT

I. Background

1. The Republic brings this appeal where an acquittal was preferred for David Kipsang Rono, a male adult who was originally charged with the offence of:-

Threats to Kill

Contrary to Section 223(1) of the Penal Code.

Particulars of Offence.

On the 18th day of June 2006 at Senetwa Trading Centre in Nandi South District of the Rift Valley Province without lawful excuse uttered a threat to kill Joseph Kipkurui Bii.

2. The Respondent/ Original accused pleaded not guilty to the offence on the 19th April 2007. His case commenced for trial in which five prosecution witnesses and two defence witnesses (inclusive of the complaint and original accused respectively) testified.

3. The Trial Magistrate found the prosecution had failed to prove its case beyond reasonable doubts and acquitted the Original accused Under Section 215 of the Criminal Procedure Code.

II. Appeal

4. The Appeal being:-

a) That the Hon. Magistrate erred in Law by not considering relevant factors raised by the Prosecution

b) The Hon. Magistrate erred in Law by considering extraneous matter in arising at his decision.

c) The Hon. Magistrate erred in law acquitting the respondent herein without complying with Section 169(3) of the Criminal Procedure Code.

5. The appellant was notified of this appeal but did not attend court. He need not do so as under Section 354(1) of the Criminal Procedure Code the court may proceed with the appeal. The Republic relied on the case law of **Julius Amedeo versus Republic** HCRA 129/2002 Sitati J. (Meru) and the Case law of **Joseph Kurti versus Republic** CRA 54/2004 (Okubasu, Githinji, Waki J of A) where the court may call upon the appellant and respondent to address the court.

6. The Republic argued its appeal on grounds that the evidence was sufficient before that court.

III. Opinion

7. The offence before court is one where:-

“... without lawful excuse utters or directly or indirectly causes any person to receive, a threat whether in writing or not, to kill any person is guilty of a felony and is liable to imprisonment for 10 years.”

8. Before the year 2003, if the threat was not in writing, then the consent of the Attorney General must be given. This now is no longer the case and the requirement of the consent by the Attorney General to prosecute is no longer required.

9. The trial magistrate required to consider the offence in the aspect of lawful excuse **“utters or directly or indirectly causes any person to receive a threat.”** Was this ingredient of offence establish and or proved?

10. I would find that the trial magistrate erred in the reasoning and conclusion in coming to its findings nor did he state the offence the respondent was being acquitted of.

11. The appeal is accordingly allowed. The respondent is hereby ordered to be retried by a court of competent jurisdiction and by way of a rehearing.

12. Section 354(3) (c) Criminal Procedure Code Cap 75 laws of Kenya also applies.

Dated this 15th day of July 2010 at Eldoret

M. A. ANG’AWA

JUDGE

15TH JULY 2010

Advocate

Ms. Murgor Advocate instructed by the Firm of M/s Murgor and Company Advocates for the Respondent

Mr. J.K. Chirchir Senior State Council instructed by the Office of the Attorney General for the State