



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT ELDORET**  
**CRIMINAL APPEAL NO. 52 OF 2009**

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**CHARLES OYURU MAYIEKO ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

**JUDGMENT**

**CHARLES OYURU MAYIEKO** was on the 6<sup>th</sup> day of February 2007 charged before the Resident Magistrate's Court at Eldama-Ravine with the offence of obstructing police officers contrary to the provisions of Section 253 (b) of the Penal Code. The particulars of the offence were that he the appellant on the 1<sup>st</sup> day of February 2007 at Shauri Yako Estate in Koibatek District within the Rift Valley Province willfully obstructed APC Joseph Bayo, Mika Metto and Pius Chelelgo who at the time of the said obstruction were acting in the due execution of their duties. He was tried convicted and sentenced to serve a term of imprisonment of five (5) years. He was aggrieved and hence this appeal.

The grounds of appeal are that the learned trial Magistrate erred in wholly believing the only police evidence which was not corroborated by any independent witness, that his explanation in defence was not considered and the sentence of five (5) years is manifestly harsh and wrong in principle. In his written submissions he stated that the evidence adduced by the three police officers was contradictory to that adduced by the civilian witness and in any event such evidence was insufficient and unreliable to sustain a conviction. It was also contradictory. He added that the trial court did not give reasons for rejecting his defence.

I have assessed that evidence and an evaluation of the same shows that the appellant did in fact have an encounter with some policemen who were dressed in civilian clothes. The evidence does not show in what manner the appellant obstructed the police in the execution of their lawful duty. It is opportune here to set out the provisions under which the appellant was charged so as to see the ingredients of the offence.

**S. 253 (b) reads:-**

**“Any person who, assaults, resists or willfully obstructs any police officer in the due execution of his duty, or any person acting in aid of that officer”;**

In what way then did the appellant herein **assault, resist or willfully obstruct** those policemen? The account given even by the prosecution witnesses is that the appellant found the administration police officers escorting some two women that they had arrested in possession of illegal brew, snatched a five (5) litre of the illegal brew and he demanded that the policemen do release the arrested women. On being asked to identify himself to the policemen the (man) appellant just ran away and he was arrested later on 3.2.1007 in town. The account by one of the arrested women was that she and another woman were being led away by some three police officers when on the way they met the appellant who got into some quarrel with the policemen and he later ran away. She said that these policemen were demanding from her some 1,000/= for her freedom but she did not have it and so she was led away to the police station and later to court where she was charged. The appellant’s account was that he was on his way to visit a pastor friend when he came upon two women, one lame and one with a young baby on her back and there was a man, apparently drunk and sitting down near the women. The women asked the appellant for assistance to be released as the man was demanding money. Thinking that the man who had the women was a con man the appellant said he asked him who he was and the man said he was a policeman. The appellant asked him who he was and then asked him why he was drunk and when he did not answer the appellant went away only to meet the same man again who then arrested him.

The policeman did not in evidence before court say that he was not drunk. He did not say in what way the appellant obstructed him. He himself said the appellant demanded that the women be released. How that demand was made to an armed policeman is what the policeman witness did not tell the court. And the policeman witness indeed admitted that the appellant ran away when asked who he was. These are not circumstances that a reasonable court, with respect, would say amount to obstructing a police officer from executing his lawful duties. The civilian witness said the policemen were demanding 1,000/= from the women. The policemen did not deny that. This appears to be what annoyed the policemen when the appellant tried to assist the arrested women leading to the police preferring charges against the appellant. It cannot be a crime of obstructing policemen when a citizen merely asks policemen what they are doing when it appears that they themselves are breaking the very law they are supposed to uphold. This Republic is not a police state. Policemen are subject to the same law that civilians are. That demand by the appellant did not amount to an offence as charged in my considered view and the decision the trial court arrived at was not borne out by the adduced evidence. The trial court clearly misapprehended the evidence.

It is glaringly clear that the court did not attempt to consider the defence evidence. In four very brief paragraphs which did not for a moment mention the defence testimony the trial court concluded thus:-

**“on admission I proceed to find the accused guilty of the offence of obstruction contrary to Section 253 (b) PC and convict accused person section 215 CP”**

That fell far below the required standard. Firstly there was no admission whatsoever and secondly the defence evidence was not assessed and reasons for its rejection given. That was a miscarriage of justice. For those reasons I must depart from the finding of the trial court.

The appellant was sentenced to the maximum sentence allowed for the offence. The trial court was influenced in meting out that sentence by the fact of the appellant having a previous conviction for impersonating a public officer. That offence was not similar to the present one and even if the appellant had been rightfully found guilty a maximum term would not have been appropriate.

In the end this appeal succeeds in its entirety. I quash the conviction and set aside the sentence. The appellant is set at liberty forthwith unless he is otherwise lawfully held.

Orders accordingly.

**DATED, SIGNED AND DELIVERED AT ELDORET THIS 30<sup>TH</sup> DAY OF SEPTEMBER 2010.**

**P. M. MWILU**  
**JUDGE**

**In the presence of:-**

Appellant present in person  
Kabaka Counsel for the State  
Andrew Omwenga – Court Clerk

**P. M. MWILU**  
**JUDGE**