



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL DIVISION
CRIMINAL APPEAL NO. 663 OF 2006

(From original conviction and sentence in Criminal Case No 10577 of 2006 of the Senior Principal Magistrate's court at Kibera)

ANTHONY MULI
MUTOKA.....APPELLANT

VERSUS

REPUBLIC.....
RESPONDENT

JUDGMENT

On 25/12/2004 it was a Christmas day. PW1 Boniface Owino Ongollo was living at Dagoretti Corner. He worked as a civil servant, now retired. He witnessed an event in which Anthony Muli Mutokaa became charged with robbery with violence contrary to Section 296 (2) with two counts. The trial proceeded with only 3 witnesses.

Then on 8/2/2006 there was change of Trial Magistrates. The accused said **"I request that my case starts afresh."**

The then trial Magistrate made that order. The hearing was fixed for 17/3/06. On that date hearing was adjourned. The hearing actually commenced afresh on 22/8/2006 with all witnesses being recalled.

PW1 Boniface Owino Okello testified that on 25/12/2004 at 3.30 pm he was with his sister-in-law sitting under a tree near Extelecom near Ngong Road. After a short while he saw 3 people come walking slowly in the field. They were listening to a radio. They reached near them and approached where the complainants were sitting. They drew out whips and started beating them. PW1 stood up to defend himself. One removed a panga and cut PW1 in the head and he fell down. He had a watch and 10/= in his pocket. They took them. The sister-in-law Jane Adhiambo Owino was screaming and running away. One robber run and cut her hand and

took her paper bag. People on the road saw what happened but did not move near. PW1 was bleeding and he went to Santack Estate. There was a clinic but it was closed. A good Samaritan gave them 100/= to use as fare to go to hospital. Some people called them saying a person had been arrested and they should go and see if they could identify him as their attacker. They identified the appellant. He was identified as the man who beat them. He had changed his shirt but had a green basket ball vest. He was carrying a paper bag and people checked it and said it had a shirt which they said he had been wearing earlier.

A further search showed he had a knife in his trouser. The knife had a red sheath. A policeman had passed them when they were being beaten. He had gone to Karen Police Station to report and bring reinforcement. Police from Karen arrived and said an offence had occurred in Kilimani Division. They alerted Kilimani Police who arrived and took PW1 and his relative to hospital. PW1 saw the appellant when he was arrested. He was wearing brown open shoes. He also looked at him as he beat him and his eyes were not balanced (as seen by court). He was also the tallest of the 3. From the time of Robbery attack took about 3 minutes.

PW2 was Jane Adhiambo Owino she was the one who was sitting down under a shade tree with PW1 on 25/12/04. Then 3 boys came walking in the field. They turned to them and asked several questions. They hit them with whips. She was not able to run away but Jane was hit with a panga and she was cut on 2nd finger. Another thug came with a knife and threatened with it. The paper bag fell down. One took the paper bag with a small purse worth 100/= with 600/= inside and Kitenge Material worth 300/=. They escaped with it and she started screaming. People did not come to help but some were standing behind the road. Even Boniface was injured. They went to hospital at Santack and found it closed. As we were on the road some people called us back to go back and identify some of the robbers who had been arrested. We came back and found the appellant. He was the tallest with open brown shoes. He had a checked shirt at the time of robbery. Also his eyes were not balanced (as seen by court). He is the one who had threatened with a knife. When he was arrested he was with a knife. The knife had black handle and red sheath.

PW3 was Stephen Kiogora who testified that on that date he was at his house in Racecourse Ngong Road. A visitor wanted to see the housewife. PW3 took the visitor to where the housewife was. They walked along the road passing Kenol. PW3 heard noises 5 metres away. He saw it was Jane PW2. She said thieves had cut her husband. PW1 saw a man bleeding. People stood there and after 10 minutes police from Karen arrived. They were told the couple were cut by thugs. The police went to bring reinforcement. PW3 removed at the scene. PW3 saw appellant and 2 others emerge from a forest near the cementery. Christopher and another arrested him. The other threatened Christopher as he was bringing appellant towards us and appellant was trying to run and PW3 helped to hold him in the arms so he does not run away. He said the knife was for defending himself. He was identified by the couple. Police came and handed the appellant to him plus the knife.

PW4 Christopher Amulawo he was staying at Satellite along Ngong Road testified with his wife. They heard screams and then got information that people had been robbed. Then after a few minutes they saw

people emerge from the forest jumping a fence to where they were. One said he was collecting firewood and had heard screams. The other ran. The other drew a knife and threatened anyone to get near him. The complainant identified the robber. PW4 met another person who recovered the knife from appellant. People wanted to beat him but Christopher took him to Santac Estate. People came for him. Prosecution called Alex Makau the police officer who received a report from that a suspect was arrested at Jamuhuri area by members of public. Inspector Macharia went with another officer and brought the suspect and he was put in cells. On investigation the suspect could not explain where he was arrested. He arrested with a knife. P3 form was completed by doctor. He was charged with this offence. The knife was exhibited . PW6 Dr. Zephania Kamau a Police Surgeon. He examined Boniface Owino Okello for assault 3 days after the event. Injury may have been caused by sharp object. Injury was assessed as “**harm**”. Also he examined Jane Adhiambo Owino with similar allegation. She was swollen and had stitched wounds on the fingers. Degree of injury was harm. P3 form was exhibited. The prosecution closed the case of prosecution. The appellant was put to his defence.

Appellant gave sworn evidence. He said he stayed at Racecourse. On 25/12/04 he went to work at Gikomba. He worked up at 1 pm and returned to the house at 2.00 pm. He had a girlfriend visiting him from Dagoretti Corner. She wanted to go to Racecourse. At 3.00 pm. they went passing cemetery. Then all of a sudden the lady woke up and said husband on ran. Appellant also stood up to run and the man chased and Appellant screamed. Many people came and said that even at showground people had been robbed.

The complainants in this case came and were told he was a thief. They were asked what had been robbed. Kilimani police came and took him to the Police Station and he was charged. It will be seen that from the time of arrest the appellant was under custody of people and police in cells. There was no need for identification. He was identified by his physical appearance his eye was not balanced. Even the court saw it.

He was identified by his knife with red sheath and open brown shoes. There is no doubt that the appellant with others did use violence when robbing PW1 and PW2 and caused injury on the said complainants. PW1 and PW2 were treated and there is medical evidence.

We find the Appellant’s appeal has no merit and the same is hereby dismissed.

Dated and delivered at Nairobi this 1st day of November, 2010.

J. N. KHAMINWA

M. A. WARSAME

JUDGE

JUDGE