



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL APPEAL NO. 672 AND 666 OF 2006

(From Original Conviction and Sentence in Criminal Case No. 9460 of 2004 of the Chief Magistrate's Court at Thika)

GEORGE KAMANDE MUNGAI.....1ST APPELLANT

CHARLES NGURO MUIYURO.....2ND APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

These appeals are consolidated. The appellants are charged with two counts of robbery with violence contrary to section 296(2) Penal Code. PW1 is the complainant. The particulars are that on 24/10/04 they robbed MWK of Shs.10,000 mattress, bedsheets all valued at Shs.12,3000/= while the second count they are charged with robbery against RNW of Shs.300/=.

The prosecution case is that PW1 is the complainant in count 1. She was asleep in her bed when she saw light in her room and she saw people enter her room. They asked her for money and she gave them 9000/= . They left her and went to other room and left her with one of the robbers who continued to question her. Then one of the robbers threatened to rape her and asked her to remove her clothes. However the other man dissuaded them and ordered them to stop. When they left she ran to her neighbours house.

PW2 was her son came back with A.P.'s who visited the scene and said she said she should report in the morning. She was able to identify two of her attackers as she had known them before and they had come from her village. She told AP's that night and on that next day she reported to Kandara Police Station where she found PW3. In recording statement they indicated they could identify some of their attackers.

They gave names to the AP's and the persons were arrested and brought to the police station.

The parade was arranged and the complainant identified both 1st and 2nd appellant PW5 is second complainant. He was at his house on 24.10.06 when three people broke into his house. They had new torches and they did beat him. He was able to identify 2 of them. He knew one Abdulla because they had been to school together as well as the one called George. They robbed PW5 of Shs.300/=.

The next day he reported at AP posts and referred to Kandara Police Station where he made statement. When the 3 persons were put to their defence they denied committing the offence.

The appellants were identified by their names at Kandara Police Station by duty officer by their names. PW1 and PW5 were attacked. Was there sufficient light to enable them to see well PW1 said that her house had lights. She saw. She woke up and saw people push the door and enter. One held the door and the other enter she screamed. They asked her for money. She said she had none. She gave them 10,000/= . The PW1 told AP's that she knew the robbers. They were from her village.

She knew their names Ngure the other Saitoti or Kamande. She went to report at 4.00 p.m. at Kandara. She knew first accused Kaindi. He was the one who was holding the door. The second is the one who removed her clothes. She did not see the 3rd one. Parade was held. She did identify the two accused. PW5 was RWW. He was working with Airforce at Eastleigh barracks on 24/10/2004. He was attacked by robbers who broke into his house. People broke into his house. There was no light in the house. 3 people entered inside. They were 3 who were beating me. He was able to identify 2. They had new torches and they were talking. I knew the people. I identify people as people I knew. He identify Abdalla and George Abdalla was a Resident of Mimko since he was a small child. He is older George is also older than me and a student of Mukure Primary School. He had not seen Abdala for about one year. I was working in Nairobi. George more recently. They hit me on the back and heard. They asked for money because he constructed my house. There were parades done 3 times. The court requested them to defend defendant handling the first defendant. He gave his name to police George Kamande Mungai. The duty officer asked for names of and then he was placed in cells.

The 2nd accused also gave his name as Charles Muriuki. Then the officer asked me about my name. I told him the 3rd accused was John Githaiga Wanjoo who resides in Miriko. He said he was a farmer on 25 October. He woke up at 7.00 a.m. He met police officers when he reached police station. He gave them his names. He denies the offence.

Recently the appellant obtained leave to amend his grounds of appeal. The amendment include Section 77 (2) (f) with Section 198(1) Criminal Procedure Code. Section 77(2) (f) with Section 198 (1) Criminal Procedure Code and that Section 169(2) Civil Procedure Code was not complied with. And that Trial Magistrate failed to arrange an identification parade were not concluded as per the police force standing orders Chapter 46.

The Trial Magistrate failed to comply with Section 163(1) Evidence Act.

The Trial Magistrate failed to summon some essential witnesses.

In reply to all these grounds firstly Section 72(2) and (6) if a person is arrested under Section 72 the person shall be released on bail if the case shall take longer to finalize unless it is unbailable. If a person is unlawfully detained the compensation shall be paid shall be made by the person who lawfully detains him.

Under Section 198 of the Criminal Procedure Code the language that shall be used in evidence is the language that will be interpreted to the accused or his advocate. However the language of Court is English and

Kiswahili and other language is to be interpreted. Again Section 169 (3) shall be written on the direction of the Presiding Judge in the language of Court.

We have examined the appeal and we find the 3 subsections has been complied with. It is clear there is lack of merit in these appeals and the same is dismissed.

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

J.N. KHAMINWA

JUDGE

M.A. WARASAME

JUDGE