

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Criminal Appeal 12 of 2006

PETER KAMONJO NJOROGEAPPELLANT

VERSUS

REPUBLICRESPONDENT

(From the original conviction and sentence in Criminal Case No.1267 of 2004 of the Senior Resident Magistrate's Court at Githunguri by L. Mutai – Senior Resident Magistrate)

JUDGEMENT

The appellant Peter Kamonjo Njoroge was charged with two counts of robbery with violence contrary to section 296(2) of the Penal Code. The facts in the 1st count are on 16th day of June, 2004 at Githunguri township in Kiambu District within Central province being armed with dangerous weapon namely hammer robbed John Mwaura Chege of 4kg Kasuku cooking fat, 3 litres of orange juice, 10 kilos of baking flour, 15 kilos of rice, 20 tissue papers, 3 ushindi soap, 5 steelwool, 28 packets of salt, 10 kilos of kima cooking fat, 3 plastic basins, 6 pieces of bar soap and 13 packets of tea leave all valued at Kshs.5,000/= and at or immediately before or immediately after the time of such robbery wounded by beating the said John Mwaura Chege. The facts in the 2nd count are on 11th day of June, 2004 at Githunguri Township in Kiambu District within Central Province being armed with dangerous weapon namely a hammer robbed Daniel Gitau Njoroge of a jacket, safari boot shoes and cash Shs.7,400 all valued at Kshs.9,150/= and at or immediately before or immediately after the time of robbery wounded by beating the said Daniel Gitau Njoroge. The appellant was also charged with alternative count of handling stolen goods contrary to section 322(1) of the Penal Code. That on 21st day of July 2004 at Kiairia village in Kiambu District within Central Province otherwise that in the course of stealing dishonestly received or retained one pair of safari boots and one jacket knowing or having reason to believe them to be stolen goods or unlawfully obtained.

It is clear that the items and goods mentioned in count 1 of the charge sheet were for John Mwaura Chege but when the said person gave evidence he stated that there was watchman working for a lady by the name Monica Nyambura PW2. Therefore the charge sheet in so far as there is variance in the evidence by the said witnesses and the contents of the charge sheet, then the same is defective. And secondly there was no evidence to support the contents of the count 2 of the charge sheet. I therefore think the trial court directed his mind to the evidence by acquitting accused on the two counts of robbery with violence. However, it is clear that the appellant was convicted under the alternative count and sentenced to serve 7 years imprisonment.

The evidence of PW4 Cpl. Anthony Kihara is that on 21st day of July 2005 members of the public reported that the accused had been arrested at his home in Kiairia. Together with two other police officers he proceeded to the home of the appellant and found he had been surrounded by members of public. The appellant was arrested and a search conducted in his house. The evidence of PW4 is that he recovered 7 packets of wheat flour, green jacket and a pair of shoes from the house of the appellant. The appellant was escorted to Githunguri police station together with exhibits which were later identified by the complainants. The accused person denied having committed the offence as charged. He told the court that he travelled to Nairobi where he remained for two days and upon his return he found police had already broken into his house. He then decided to go to the police station to make enquiries, but he was arrested and locked in. The basis of the appellant's conviction is single evidence of PW4. According

to PW4 at the time he carried out the search he was together with two other police officers. The said officers were not called as witnesses so that the evidence of PW4 could be supported or corroborated. PW4 stated that he was alerted by the members of the public who had earlier arrested the appellant and that they were present at the time the search was conducted in the house of the appellant. None of the members of the public were called to shed more light on the circumstances that led to the arrest of the appellant. It is therefore my decision that the case against the appellant was not proved beyond reasonable doubt and the trial court erred in failing to give the appellant the benefit of doubt which he is entitled as a matter of right. I think the appellant's appeal has considerable merit, therefore the same is allowed, conviction quashed and the sentence set aside. I order the immediate release of the appellant unless lawfully held.

Dated, signed and delivered at Nairobi this 29th day of January 2009.

M. WARSAME

JUDGE