REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

Criminal Appeal 311 of 2006

ALEXANDER NGUGI NJERI…….APPELLANT

-AND-

REPUBLIC ……RESPONDENT

(An appeal from the Judgment of Principal Magistrate Mr. K.W. Kiarie datd 16th June, 2006 in Criminal Case No. 444 of 2006 at Kiambu Law Courts)

JUDGMENT OF THE COURT

The appellant herein faced the charge of robbery with violence contrary to s. 296(2) of the Penal Code (Cap. 63, Laws of Kenya). The particulars were that the appellant while in the company of others not before the Court, on 26th February, 2006, at Ndenderu Village in Kiambu District, in Central Province, robbed ***Samuel Njuguna Kamau*** of Kshs. 1000/=, and at, or immediately before or immediately after the time of such robbery, used actual violence upon the said ***Samuel Njuguna Kamau***.

The prosecution case was that the complainant was walking along, when the appellant and two others pounced on him and robbed him of his property; and it is during that commotion that members of the public arrested the appellant. The appellant admitted having been in the said fracas, but denied the offence charged.

The learned Magistrate made his finding as follows:

"**In the instant case, the accused was in [the] company of two other people and they beat the complainant before and after robbing him. I am therefore satisfied beyond any reasonable doubts that the prosecution has proved the case against the accused person beyond any reasonable doubts. I find him guilty and accordingly, convict him of the offence he is charged with."**

The trial Court sentenced the appellant to death, in accordance with the applicable law.

In his petition of appeal, the appellant contended that PW1, PW2 and PW3 were not credible witnesses, and the Court should not have relied on their evidence; that the prosecution evidence was contradictory; that proof-beyond-reasonable-doubt was not achieved; that essential witnesses were not called; that the conduct of trial was unfair, and contrary to the terms of s. 77 of the Constitution; that the decision did not comply with the terms of s. 169(1) of the Criminal Procedure Code (Cap. 75, Laws of Kenya), and did not adequately consider the defence case.

When the appellant came for the hearing of his appeal, he was armed with written submissions which incorporated what was referred to as "amended grounds of appeal", and the same stated that the trial Court should have taken into account that nothing incriminating had been found in his possession. The appellant had nothing to add to his written submissions.

Learned counsel ***Mr. Murithi***, contested the appeal, and submitted that overwhelming evidence had been adduced against the appellant. The complainant had been attacked and felled by the appellant and his companions; they pinned him down, beat him up and grabbed his money, Kshs. 1030/= – and this was in broad daylight at 10.00a.m. Members of the public witnessed the commotion, and they came along as Good Samaritans; the appellant and two others escaped, but they were then pursued by the complainant and others. PW2 helped in the arrest of the appellant who was then delivered at the Police station.

Counsel submitted that this was the typical case in which there was no failure of identification; in broad daylight, the appellant was apprehended; and his arrest was immediately after the offence was committed. The complainant's evidence was well corroborated by that of PW2 and PW3. PW3 was called to the scene by the complainant; and PW3 drove to the scene, meeting PW1 and PW2 as they were leading the appellant to the Police station.

Mr. Murithi contested the appellant's claim that the trial Court had not complied with s. 169 of the Criminal Procedure Code, which requires reasoning, as the thread holding a proper judgment together. The learned Magistrate, it was urged, had given a cogent analysis of the evidence, and had given reasons for his decision.

Learned counsel disputed the claim of unfairness in the trial process. Counsel urged that the trial was fair, and was conducted in a language understood by the appellant herein; and the appellant did fully participate in the trial, by cross-examining witnesses.

On the defence offered, counsel noted that the appellant in his unsworn defence, had denied being involved in robbery with violence; but he (the appellant) had admitted he was involved in the fight against the complainant. This goes to show, counsel urged, that the appellant had only denial but no plausible defence; and all the ingredients of a s. 296(2) Penal Code offence were met.

Counsel urged the Court to dismiss the appeal; uphold conviction; affirm sentence.

We have carefully considered all the evidence. It is clear to us that the robbery staged against the complainant, ***Samuel Njuguna Kamau*** (PW1) on the material occasion, was accomplished in a state of commotion and fighting; and the appellant does not deny he was at the *locus in quo* and was involved in the said fighting; in his own words:

"*I was not involved in the offence. I went and found some people who arrested me and alleged I was a thief …… I only fought Njuguna……"*

It is not logical, nor can it be true, to say as the appellant does, that he was part of the gang fighting and robbing the complainant, save that he personally did not extract anything from the complainant; if his companions took the complainant's property, he was in league with them in the enterprise of robbery, and he was, consequently, a robber like them – and that is the tenor and effect of s. 296(2) of the Penal Code (Cap. 63).

We hereby dismiss the appellant's appeal; uphold conviction; and affirm sentence as duly imposed by the trial Court.

Orders accordingly.

DATED and **DELIVERED** at Nairobi this 21st day of January, 2009.

J.B. OJWANG **M. WARSAME**

JUDGE **JUDGE**

Coram: Ojwang & Warsame, JJ.

Court Clerks: Huka & Erick

For the Respondent Mr. Murithi

Appellant in person