



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CRIMINAL APPEAL 87 OF 2007
SEIF ABDULLAHI APPELLANT
VERSUS
REPUBLICRESPONDENT

JUDGEMENT

The Appellant Seif Abdullahi has filed this appeal against his conviction and sentence imposed by the Ag. Senior Principal Magistrate Mombasa on 27th April 2007. The Appellant was on 27th November 2006 charged with the offence of Robbery with Violence contrary to section 296(2) Penal Code. The Appellant pleaded guilty to the offence. The facts were read out to him and the Appellant maintained his plea of guilty. The learned trial magistrate proceeded to convict and sentence him.

On the date of hearing of his appeal the Appellant came to court making a lot of noise and commotion demanding that he be released immediately or to quote his own words “*Tumalizane*”. We will comment on this behaviour later on. Mr. Ondari learned State Counsel opposed the appeal and supported the Appellant’s conviction and sentence by the lower court.

The Appellant did file his written submissions in court on 29th May 2009. In his submissions the Appellant readily concedes that he pleaded guilty to the charge as he writes:-

“The record Your Lordship indicates clearly that I was convicted on my own plea of guilty”.

Indeed as a court we are quite satisfied that the learned trial magistrate did follow the proper laid-down procedure in recording the Appellant’s guilty plea. The charge was read out. The Appellant initially on 27th November 2006 entered a plea of “*not guilty*”. On 29th March 2007 the Appellant appeared before court and indicated that he wished to change plea. The charges were read out and he pleaded guilty. The learned trial magistrate did caution the Appellant that he faced a capital charge to which he replied:-

“I have admitted the offence. I am 26 years old”.

The trial magistrate postponed recording of facts to 30th March 2007. On 27th April 2007 the charges

were again read out to the Appellant and he responded:-

“I have pleaded guilty I stand by that”

The facts were then read out to him and he responded:-

“Facts correct”

It is clear to us that the plea of guilty by the Appellant was clear and unequivocal at all times. There can be no doubt that he meant to plead guilty to the charge. Even after being cautioned that it was a capital offence the Appellant still maintained his plea of guilty.

One of the grounds of appeal raised by the Appellant is that the learned trial magistrate failed to send him for psychiatric evaluation. However this claim is not borne out by the record. Despite there being no legal requirement to do this the learned trial magistrate did on 30th March 2007 refer the Appellant for a psychiatric evaluation. The matter was again adjourned on 13th April 2007 to await the psychiatrist’s report. The report dated 12/4/2007 was availed in court on 27th April 2007. It indicated that the Appellant was sane thus fit to plead. It was only after receiving this report that the learned trial magistrate proceeded to yet again read out the charge and facts to the Appellant. The Appellant for a third time pleaded guilty. We have no doubt that the Appellant’s theatrics before us were calculated to convince us that he had a mental problem. Such a mental problem (if any) could only have arisen **after** his conviction in the lower court. At the time of his psychiatric evaluation the Appellant was fit as a fiddle. We further remain unconvinced by the Appellant’s theatrics in that he would only start to act out once his file was called out. During mention and hearing of other matters the Appellant remained totally silent. Mental problems do not ordinarily manifest on cue in this manner. We find this all to have been an act put on by the Appellant. We further find that contrary to the claims in his submissions the learned trial magistrate did actually obtain a psychiatrist’s report on the Appellant before he was convicted. Therefore this limb of his appeal fails.

The second limb of the Appellant’s appeal was that the learned trial magistrate failed to write a judgement in compliance with S. 169(1) and (2) of the Criminal Procedure Code. However as pointed out by Mr. Ondari for the State S. 169 will only apply after a full hearing of the trial. It is only then that a magistrate is required to write a judgement giving reasons for his/her decision. In a case such as the present one where an accused pleads guilty and maintains a guilty plea even after the facts are read out to him the applicable law is S. 207(2) Criminal Procedure Code which provides -

“If the accused person admits the truth of the charge his admission shall be recorded as nearly as possible in the words used by him, and the court shall convict him and pass sentence upon or make an order against him, unless there appears to it sufficient cause to the contrary”

There is no requirement that a judgement be written. We find the Appellant’s submissions misguided in this respect.

Finally the Appellant appeals against his death sentence stating that it is not provided for by the law. Here again the Appellant is misguided. S. 296(2) of the Penal Code clearly provides that a person convicted of the offence of Robbery with Violence **“shall be sentenced to death”**. The term used in this provision of the law is **shall** which is a mandatory term. As such even if the learned magistrate wished to she could not impose any other sentence upon the Appellant. We therefore find that this third ground of the appeal has no merit as the sentence imposed on the Appellant is both lawful and mandatory.

In conclusion therefore we find that the trial magistrate did properly record the Appellants plea of guilty. She did take time to caution the Appellant and obtained a psychiatric report before sentencing. The Appellant maintained an unequivocal plea of guilty over several court appearances on different dates. We find no valid reason to interfere with the conviction or sentence imposed by the lower court. This appeal has no merit and we dismiss it in its entirety. Conviction and sentence imposed by the subordinate court is hereby confirmed.

Dated and Delivered in Mombasa this 28th day of July 2009.

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F. AZANGALALA

JUDGE

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M. ODERO

JUDGE

Read in open court in the presence of:

Mr. Onserio for State

Appellant in person

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F. AZANGALALA

JUDGE

28/7/2009

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M. ODERO

JUDGE

28/7/2009