



**FRANCIS MUTUKU NZANGI ..... APPELLANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

(From the original conviction and sentence in Criminal Case No. 2871 of 2004 of the Chief Magistrate’s Court at Machakos by V. W. Wandera – Principal Magistrate)

## **JUDGEMENT**

The appellant was charged and convicted with attempted robbery with violence contrary to section 297(2) of the Penal Code. The particulars are that on 2<sup>nd</sup> day of June 2004 at around 7.00 a.m. along Ngei road in Machakos Township within Eastern Province jointly with others not before court while armed with pangas attempted to rob Abdulgani Ayub of his money and at or immediately before or immediately after the time of such robbery wounded the said Abdulgani.

The appellant alleges that the evidence against him tendered by the prosecution was not watertight, it was not cogent and it was inconsistent with the charges that were laid against him. Mr. Konya learned counsel for the appellant submitted that the ingredients of the charge of attempted robbery were not proved beyond reasonable doubt and that the evidence that was relied upon by the trial court was that of the complainant without any corroboration. The State Counsel supported the conviction and sentence meted out by the trial court.

On our part we have analyzed the whole evidence afresh and we think the appellant

was properly convicted on the evidence tendered by the prosecution. It is clear that the complainant stated that on the material day at around 7.00 a.m. as he was praying inside his shop he heard a knock on his door and proceeded to open thinking that they were customers looking for goods. The appellant and two others came into the shop and they demanded to be given a bicycle gear set. PW1 then picked the bicycle gear set from the shelf and gave to the appellant and his other friends. They took it and checked it but requested the complainant gives them another set so that they could compare with the earlier one. As the complainant was removing the second gear set from the shelf, one of the persons who was with the appellant closed the door from inside. The complainant sensed danger and rushed to stop them from bolting the door from inside. The appellant and his companions accosted the complainant and started assaulting him. The complainant then shouted for help attracting the attention of the members of the public who rushed and pushed the door from the front side. The appellant and his friends started running away from the scene but the appellant was arrested and taken to Machakos Police Station. The evidence of the complainant is that he saw the appellant as one of the robbers who attempted to rob him on the material day. The appellant was arrested a few metres away from the scene where the attempted robbery was committed.

The evidence of the complainant was corroborated by PW2 Philip Makau Mulwa who works with Machakos Municipal council as an *askari*. In his evidence he contended that at around 7.00 a.m. while on his way to work from his house which is behind the complainant's shop he heard the complainant shouting for help. He then went straight to the shop of the complainant and found the front door shut from inside. He then pushed the door and found three men assaulting the complainant who was lying on the floor. He stated that when he opened the door, two of the persons who were assaulting the

complainant managed to run away but the appellant was arrested opposite the complainant's shop with the help of the members of the public.

PW3 Dr. David Kaburu confirmed that PW1 had suffered multiple bruises all over the face and assessed the degree of injuries as harm.

PW4 Peter Kyule operates a retail shop along Ngei road in Machakos town and stated that while at his shop he heard somebody screaming across the road alleging that he had been attacked by the robbers. He stated that when he looked at the side where the screams were coming from, he found the complainant holding somebody at the door to his shop. He further stated that the person who was struggling with the complainant managed to free himself from the complainant but he was arrested a few metres away from the complainant's shop. In short he confirmed that he participated in the arrest of the appellant and that he also confirmed that the appellant was the one who was trying to escape having assaulted and attempted to rob the complainant.

PW5 PC Catherine Mugambi confirmed that on the material day while in the crime office she received the appellant from the members of the public on allegation that he had attempted to rob the complainant herein.

That being the facts presented before the trial court, the question is whether the appellant is the one who attempted to rob together with others the complainant on the material day. In his defence the appellant confirmed that he was arrested on the material day by PW2 and PW3 who were in company of four others on allegation that he had attempted to rob items from an Indian. He says that he was beaten until he lost consciousness and a day later he found himself at the Machakos Police Station.

The evidence of the complainant is that the appellant with two others not before court went to his shop at about 7.00 a.m. pretending to be customers but they turned out to

be robbers with intention to steal from him. It is clear that the appellant and two others entered the complainant's shop on a mission to steal therefrom. They attempted to lock the complainant's shop from inside but the complainant started screaming for help attracting the attention of PW2 and PW4. PW2 was clear in his evidence that he lives behind the complainant's shop and as he was heading to his place of work he heard the complainant shouting for help. He immediately responded and found the complainant's shop locked from inside while the complainant was still shouting for help. When he tried to open the door, three persons emerged and started running in different directions. He then followed the appellant and together with PW4 they managed to arrest him and took him to Machakos Police Station. In our mind it is clear that the chain of events from the time the attack took place to the time the appellant was arrested had not been broken. We are satisfied with the evidence tendered by PW1 that he did not lose sight of the appellant from the time of the attempted robbery to the time when the appellant was arrested and taken to police custody. That evidence is supported by the evidence of PW2 who stays behind the complainant's shop and who testified that the appellant was one of the persons who had attacked the complainant. That evidence is further reinforced by the evidence of PW4 that he did not lose sight of the appellant from the time he emerged from the complainant's shop to the time he was arrested. It means the evidence of PW1 was corroborated in all material respects by the evidence of PW2 and PW4. It cannot therefore be said that the appellant was convicted on pieces of disjointed and discredited evidence. The quality of the evidence on the record dictates we sustain the conviction entered by the trial court.

In conclusion and having considered the circumstances of this case very carefully we have no doubt that the appellant was involved in the offence charged directly and we

do not see any reason why PW1, PW2 and PW4 would incriminate him. We are satisfied that he did not escape from the scene and that indeed he was kept in sight from the start to the time he was arrested by PW2 and PW4 a few metres away from the scene. In fact it is the evidence of the appellant that he was arrested at the scene but he does not explain why PW2 and PW4 would incriminate him save that he was the one who attempted to rob PW1.

In the premises we are of the view that the appellant was convicted on sound and proper evidence tendered by the prosecution. The appeal has no merits and it is hereby dismissed. Sentence affirmed.

Dated, signed and delivered at Machakos this 21<sup>st</sup> day of October 2009.

**ISAAC LENAOLA**  
**JUDGE**

**M. WARSAME**  
**JUDGE**