



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT KERICHO**

**Criminal Appeal 39 of 2007**

**FREDRICK KIPRONO LANGAT ..... APPELLANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**(Appeal against both conviction and sentence of the Principal Magistrate's court at Kericho, [W. NYARIMA ESQ., SPM] delivered on 23rd July, 2007 in Criminal Case No. 1488 of 2006)**

**JUDGMENT**

1. Criminal Law
  2. Criminal Appeal- Ang'awa, Mugo jj
  3. Subject of original Criminal Case
    - a. Subordinate Court
    - b. Robbery with violence contrary to Section 296(2) of the Penal Code.
    - c. On the 5<sup>th</sup> day of August, 2006 at Motobo village in Kericho District within Rift Valley Province while armed with a knife robbed Simon Kipngeno Rop Kshs. 20,000/= and immediately before or immediately after the time of such robbery threatened to use actual violence to the said Simion Kipngeno Rop.
    - d. Plea not guilty on 11<sup>th</sup> August, 2006.
    - e. Trial 20<sup>th</sup> November, 2006, 11<sup>th</sup> January, 2007, 30<sup>th</sup> April, 2007, 29<sup>th</sup> May, 2007.  
Defence on 6<sup>th</sup> July, 2007
    - f. Appellant alleged to have witnessed PW2 pay PW1 Kshs. 20,000/= inside vehicle. Raining.
    - g. PW2 drove away and left PW1 and appellant.
    - h. Appellant robbed PW1 with a knife.
    - i. Appellant went to PW5's house on same night 5<sup>th</sup> August, 2006 at 10.00p.m. and counted wet moneys of Kshs. 18,000/=.
    - j. Alleged to have sold power saw.
    - k. Bought goods and left in house of PW5 (Ext. 1-21) by way of clothes and utensils
    - l. PW5 reported to chief after four days.
    - m. Appellant arrested and new clothes and utensils(Ext. 1-21) produced to court.
- BB) Defence**  
That he sold power saw  
That PW1 owed him moneys.
- CC) Judgment**  
Guilty as charged convicted to death.
5. Appeal
    - a) Charges not warrant conviction under robbery with violence
    - b) Trial magistrate relied on testimony of a single witness.
    - c) Relied on insufficient and contradictory charges.
    - d) Language not disclosed that was used in Court,  
Section 207(1) CPC, 198CPC  
Section 77/2/b/f of Constitution
    - e) Defence rejected by court.

- f) Charge sheet defective, moneys never recovered.
5. State in reply
- i) Upholds conviction and sentence.
  - ii) Charge read
  - iii) Evidence of witnesses.
  - iv) Language understood

6. Held –

Appeal dismissed. Sufficient evidence to uphold conviction and sentence.

7. Case Law by Appellant

- a) Jamu V R CA Mombasa. Case No. 181/02  
(Omollo Okubasu and Githinji JJa)  
(4.8.03)
- b) Gikonyo Kuruma V R and Mburu Mbugua V R  
(1980) KLR 23  
Treveleynan and Todd J.J.)

By State Counsel - NIL

8. Advocates

Appellant in person

B.L. Kivihya Senior State Counsel

instructed by the Attorney General

I: Procedure

1. Fredrick Kiprono Langat the appellant and original accused in the subordinate Court at Kericho was originally charged with the offence of

***Robbery with violence contrary to Section 296(2) of the Penal Code.***

The particulars of the offence being

***On the 5<sup>th</sup> day of August, 2006 at Motobo village in Kericho district within Rift Valley Province while armed with a knife robbed Simon Kipngeno Rop KShs. 20,000/- and immediately before or immediately after the time of such robbery threatened to use actual violence to the said Simion Kipngeno Rop.***

2. A plea of not guilty was entered on 11<sup>th</sup> August, 2006, five days after the alleged incident.
3. A trial was heard on 20<sup>th</sup> November, 2006, 11<sup>th</sup> January, 2007 before one magistrate. The trial was taken over by second magistrate **Section 200 Criminal Procedure Code.** On 30<sup>th</sup> April, 2007, 29<sup>th</sup> May, 2007 and the defence heard on 6<sup>th</sup> July, 2007.
4. After trial, the appellant was found guilty as charged and convicted. He was sentenced to death.
5. In the subordinate courts he was unrepresented. Being dissatisfied with the sentence he appealed to this High Court.
6. His appeal was heard by two judges.

## **II: Background**

7. The appellant was known to the complainant (PW1) as a casual worker. He had sold molasses to the complainant and asked that he be paid 100/=. The complainant admitted that he owed him the sum of Kshs. 100/= but asked that he returns later. That was on 5<sup>th</sup> August, 2006.
8. PW2 and PW1 had entered into a sale agreement whereby PW2 purchased a motor vehicle from PW1. On the material evening (6pm) of 5<sup>th</sup> August, 2006, PW2 went to pay the balance of moneys owed to PW1 amounting to Kshs. 20,000/=. It was the accused/appellant who on the same material night opened the gate to PW'1 home. There were two gates. The appellant stood to one side. It was raining PW1 entered the vehicle belonging to PW2 and moneys was counted and paid to him (PW1).
9. PW2 drove off and left but half an hour later received a call from PW1 that he had been robbed of his money.
10. According to PW1 as soon as PW2 drove off, he felt the appellant hold his pocket. He did not speak but when PW1 attempted to speak he was held by the neck with a knife. The appellant took the moneys and ran away.
11. PW5, one Erick Cheruiyot informed the subordinate court that on the material night of 5<sup>th</sup> August, 2006, he heard a knock at his door at 10.00p.m. The appellant came in and removed moneys of Kshs. 18,000/=. The moneys was wet. The appellant counted it. They had supper, slept and the following day the appellant left, only to return at 12.00 noon. He came with a bag that contained clothes and utensils.
12. The appellant asked that these items be kept with PW5. He agreed but after four days he became suspicious and reported to the area chief. The explanation given by the appellant to him (PW5) was that the moneys was obtained from selling a power saw.
13. The chief PW3 had received a complaint of the theft and began to look for the appellant. He received information from Erick Cheruiyot and apprehended the appellant.
14. The appellant was rearrested together with an item bought that was produced as Exhibit 1-21. No moneys was recovered.
15. In his defence sworn in Kiswahili, the appellant claimed that he sold a power saw. On 20<sup>th</sup> March, 2006 the complainant called him and offered him a job to saw timber work worth of Kshs. 350,000/-. His pay was Kshs. 70,000/=. He was paid Kshs. 30,000/- and the balance was to be paid when the work was completed. He and the complainant sometimes took beer together. His power saw broke down and he asked complainant for moneys. In meantime complainant sold the timber. Both quarreled after taking a local brew. The appellant went to his house. He sold his power saw for Kshs. 22,000/= intending to purchase another for Kshs. 50,000/=. On 4<sup>th</sup> June, 2006 he went to the complainant *[to be paid Kshs. 30,000/= to make up 50,000/= to purchase a new power saw]*. The complainant said he sold the timber on credit. On 9<sup>th</sup> June, 2006, the complainant brother, the chief asked he be arrested on grounds of assaulting the complainant. His clothes was removed from him.

16. The appellant in the lower court argued that the complainant admitted he had a debt of the appellant. *“I could not rob him (the complainant) and risk a death sentence yet stay in my house”*.
17. He denied in cross-examination, that he was in Erick’s house. He stated that the sum complainant owed him was Kshs. 7,600/= and went to the complainant’s house on 31<sup>st</sup> May, 2006 and not 5<sup>th</sup> August, 2006.
18. The trial magistrate relying on the evidence before court found the appellant guilty as charged. He believed the prosecution evidence and rejected the defence.
19. The magistrate concluded that the appellant did rob the complaint although at the time the complainant and the appellant were alone. That the accused appellant was armed. The evidence of Erick Cheruiyot was believed.
20. On being convicted and sentenced to death the appellant filed his appeal to this High Court.

### **III: Grounds of appeal**

21. The grounds of appeal against both conviction and sentence was substituted to
  - a) **The ... trial magistrate failed to note the charges [as] drawn ... did not warrant a conviction under Section 296(2) penal code.**
  - b) **The ... trial magistrate relied on the evidence/testimony of a single witness ... [but] failed to warn himself ...**
  - c) **The ... trial magistrate relied on insufficient and contradictory [evidence] to convict [the appellant]**
  - d) **The trial magistrate ... failed to comply with [the language provision] under Section 207(1) Criminal Procedure Rules, 198 Criminal Procedure Rules and Section 77/2/b/f of the Constitution of Kenya.**
  - e) **The trial magistrate ... rejected the appellant defence [giving no reasons for doing so] under Section 169 (1) of the Criminal Procedure Code.**
22. The appellant arguing ground 1, 2 and 3 (*a, b, c*) stated that he did not dispute that the complainant was robbed but took issues on the charge sheet. This was defective. It stated that he had been armed with a knife. The charge should have disclosed that the knife was dangerous, offensive. He relied on the case law of

**Juma V R**  
**CA Mombasa**  
**(No. 181/02)**  
**(48.03)**  
**(Omolo, Okubasu and Githinji JJa)**

where the charge did not clearly state whether the knife was a dangerous weapon

23. The issue of relying on the testimony of a single witness was prejudicial to his case. The trial magistrate noted no one witnessed the said robbery. He instead relied on the evidence of the complainant, being a single witness.

24. The appellant relied on the case of

**Gikonyo Kuruma V R**  
**Mburu Mbugua V R**  
**(1980) KLR 23**  
**(Trevelyan, Todd JJ)**

where the judges rejected the evidence of a single witness relied on by the subordinate courts.

25. In this case the trial magistrate failed to warn himself in admitting and relying on the evidence of a single witness.

26. Further, the evidence before court was contradictory. The time the payments were made he is said to be at the gate. It was unclear from the records what role he played.

27. The complainant and PW2 are friends. They must have compared their evidence.

28. There was no moneys that had been recovered.

29. The truth, he argued was with the defence. That he sold and obtained moneys being a power saw.

30. As to ground 4 and 5 (d and e) no language and interpretation was used.

31. The complainant owned him Kshs. 30,000/=.

**IV: In reply**

32. The state asked that the appeal be dismissed. This was that the charge was drawn according to law. The evidence given was a knife was used to instill fear upon the complainant which robbery with violence was established. The facts disclosed the appellant was found in possession of a sum of moneys of Kshs. 18,000/=.

33. The language used and witnesses gave evidence in a fair way.

**II: Opinion**

34. The charge as drawn is according to law. The prosecution requires to prove its case beyond any reasonable doubt. The evidence disclosed is that the appellant held a knife to the complainant's neck thereby instilling a state of mind upon the complainant where he could not resist his assailant. The object used was a knife. Through out the complainant's evidence in cross-examination the issue of the knife was never taken into account.

35. Perhaps, if the appellant had an advocate, he would have been adequately defended. Our laws in Kenya does not permit for a capital charge accused person in the subordinate court, to be given an advocate by the state. *[Only at the High Court for Murder trials]* no advocate is provided on appeal at the High Court.

36. The issue of the trial magistrate relying on the evidence of a single witness is not correct. There were

circumstantial evidence that pointed to the appellant. For instance on the material evening it was raining. That was the reasons the complainant entered the PW2's vehicle.

37. The appellant was seen five hours later in PW5's house with Kshs. 18,000/= which was wet. He counted the wet notes in the presence of PW5's. The following day he returned with clothes and utensils.
38. The conclusion the prosecution came to was that, the sums of funds was used to purchase the items. It was alleged by the appellant that he sold a power saw for Kshs. 20,000/=. His intention was to buy another saw for Kshs. 50,000/=. The appellant further stated on appeal and defence that he did timber work for the complainant. The complainant was never asked about the said contract by the appellant in cross-examination. He never informed the police, nor the witnesses that the genesis of the dispute was a contract on a power saw?
39. The appellant alleged he was framed.
40. The complaint stated the issue was of molasses which was supplied to him by appellant. The balance of Kshs. 100/= was due and owing to the appellant but not paid. He had been told to come later.
41. As to the contradictory evidence raised by the appellant it does not amount to such. The witnesses gave clear evidence.
42. The second case law relied on the single witness is not applicable in this case due to the circumstantial evidence in this particular case having been established.
43. The language aspect is that the appellant was given a fair trial. There was interpretation in Kiswahili/English both being the language of the court.
44. During his appeal the appellant spoke eloquent English. The proceedings were in order.
45. The appeal is rejected. It is hereby dismissed.

**DATED** this 3<sup>rd</sup> day of December, 2009 at **KERICHO**

.....

**M.A. ANG'AWA**

**JUDGE**

.....

**M.G. MUGO**

**JUDGE**

**Advocates**

Appellant in person

B.L. Kivihya Senior State Counsel instructed by the Attorney General