



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU

Criminal Appeal 7 of 2007

FRANCIS KAMANJA KIAMA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

Francis Kamanja Kiama the Appellant was charged with the offence of robbery contrary to Section 296 (2) Penal Code. This was a retried. After hearing evidence the Trial Magistrate convicted the Appellant with the alternative charge of handling stolen property contrary to Section 322 (2) of Penal Code.

The evidence was that there was a robbery in the home of the complainant. Four men broke into the house at night there was security light which was broken by robbers as they broke into the house. Then after taking several items from the complainant house they ran away. The police came and other persons but did not find the robbers after a night long chase even in maize plantations. The appellant was arrested on 17/10/2001 by P.C Mwaniki. In his defence he stated how he had a grudge with arresting officer P.C Mwaniki and that they fought and on the following day Mwaniki came with 5 persons and took him to police post. It is not clear if the appellant statement was sworn or unsworn. It is not indicated the issue of identification there was moonlight but PW1 says she heard security light being hit. It went off. Therefore there was no strong light. She said four people entered and were asking for money. "Identified one short black man." She was beaten and she did not know this person before. It was only after they left that she screamed and police officers came. She told the police the route the robbers had followed. She said accused was arrested at 6 a.m. with the stolen goods. This evidence if not true the evidence is that appellant was arrested on 17/10/2001 and no exhibits were found on him. The brief case was collected by police in a maize plantation by road side.

PW3 said that as they were chasing the robbers out in the fields they saw 2 people approach them "We recognized Accused and Mbaka." These are the people he had seen through the hole of door of his house that very night. They had a brief case and torches. They run away when police told them to stop. They dropped the brief case and torch. There is no evidence that it was accused who had the brief case. It was at night and the identification was by the way accused walked and also that he had seen him at the scene. This way of identification is not satisfactory. Also accused was not arrested on that morning. There is clear evidence that he was arrested on 17/10/2001 by P.C Mwaniki.

PW4 also said that complainant was able to identify the robbers because there was electric light. She said lights were broken by the robbers. She did not talk of other light. "While they were running"

PW3 identified accused in the moonlight. All this evidence of identification was not satisfactory to support conviction.

I have considered the evidence of identification and of recovery of stolen items and it is my finding that the circumstances surrounding identification was not satisfactory. And that the evidence of recovery is not reliable the accused was not arrested on that night but on 17/10/2001.

I therefore find that the prosecution evidence was not sufficient to prove the alternative charge beyond reasonable doubt. I allow the appeal and order the Appellant to be set at liberty forthwith unless otherwise lawfully held.

Dated this 10th June, 2008.

J. N. KHAMINWA

JUDGE

10/6/2008

Khaminwa – Judge

Njue- Clerk

Appellant -present in person

Mr Omwega for State

Read in open court.

J. N. KHAMINWA

JUDGE