

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

Criminal Appeal 46 of 2007

DICKSON NDWIGAAPPLICANT

VERSUS

REPUBLIC..... RESPONDENT

JUDGMENT

Dickson Ndwiga Njeru was charged with the offence of Robbery with violence contrary to Section 296 (2) of Penal Code. He was convicted and sentenced to death. He has set out several grounds of appeal summarised as follows: that the offence was not proved beyond reasonable doubt that the light at scene was not good to enable identification, that the watch claimed by complainant was not identified by receipt and that the alleged panga was not in his possession, the Trial Magistrate failed to consider the appellants defence and the witness were relatives while he was a stranger in that area which caused him to be mistaken as a robber.

The Prosecution evidence is that on 21.12.2005 the complainant was walking at about 8.30 p.m. on reaching near his home, he encountered persons in the dark who shone a torch and ordered him to stop. The attackers followed him and trapped him and he fell down. The attackers searched him and took an Erickson mobile phone 710, a wrist watch and make Seiko 5 and some Kshs. 250/= The attackers ran away. The complainant screamed and people came out from his father's home. The attackers ran away but did not get far. The complainant and others cornered them and caught one attacker in a tea plantation. It was the appellant. The appellant had a panga which was identified by complainant. The appellant was taken to the police station where he was searched and in his pocket was found a watch. The complainant claimed to be his. He identified because the glass had broken and a temporary glass was fixed by a watch maker named Kathuri.

The accused was also seen by PW 2 in the tea plantation and he was arrested there and taken to police station. He had a panga and a torch not working well. PW 3 was also present at the scene when appellant was arrested and taken to Police Station. Also PW 4 was present at the scene PW5 was the police Officer who recorded the robbery report on 21.12.2005 at about 11.30 p.m. The appellant was brought in by members of public. It was told that he had robbed the complainant and after searching the appellant he recovered a wrist watch Senko 5 which the complainant identified as his. He also recovered a panga from the people. He arrested the appellant and placed him in the cell. The prosecution closed its case and the appellant was put to his defence.

He narrated his story and produced an exhibit D 1 saying it was the receipt to support his claim for the watch found in his pockets dated 08.06.86. The Trial Magistrate examined the exhibited receipt and came to the conclusion that it was fabricated. From the record, it is clear that she considered the appellants claim, seriously before coming to that conclusion. From the examination of the above, we find that the appellant was arrested at Kavutiri and by his admission he was present at the scene at least earliest 7.30 p.m on the day he was arrested being 21.12.2005. He met people who arrested him and took him to police station. The Prosecution state that when they went to answer to the screams of complainant they saw several persons who were attacking complainant. These people ran away but the Appellant was left behind and ran into a tea plantation. He fell down and the people in the case arrested him.

These people never lost sight of the appellant from the scene to the place where he fell down and was

arrested. Therefore, there was no question of mistaken identity. They had torch and were able to see him. The appellant was arrested with a panga, a dangerous weapon and was carrying a torch.

We are of the view that the evidence advanced by the prosecution was of high standard and sufficient to prove the offence beyond reasonable doubt.

We therefore find no reason to interfere with conviction or sentence. The grounds of appeal have no merit. We therefore dismiss the appeal.

DATED this 31st of July 2008

J. N. KHAMINWA

J. MAKHANDIA

JUDGE

JUDGE