

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU

Criminal Appeal 156 & 157 of 2005

WILSON MUNYI IRERI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(CRIMINAL APPEAL 157 CONSOLIDATED)

JUDGMENT

The appellants filed separate appeals prepared by the same Advocate.

Both appellants were jointly charged with the offence of robbery with violence contrary to the provisions of Section 296 (1) of the Penal Code. They were tried and found guilty as charged and sentenced to 7 years imprisonment each.

The particulars of the appeal contains 6 grounds the summary of which is that the Trial Magistrate erred in convicting the appellants against the weight of evidence which did not prove the case beyond reasonable doubt without taking into account the conditions of the appellants.

Also that the sentence of 7 years was excessive, oppressive and draconian.

The facts presented to the court were that on 10/10/2004 at around 9 p.m. the complainant was traveling on a bicycle along the way when he met appellant Jonathan Njeru Muriithi second Appellant. As the two men passed each other the 2nd appellant hit the complainant three times on the head with stick which had a bolt at the end. The complainant who was ridding a bicycle disembarked. Other persons came including the first appellant and a Mr. Muriithi. All of them started heating the complainant. It was second appellant who took 100/= from the shirt pocket of the complainant. They then left the complainant lying on the road bleeding. He says he became unconscious and when he came, he woke up pushed his bicycle and reached his home at midnight. He reported the matter to Ishiara Police Post the following day. He was treated and P3 form was exhibited showing that the attack was reported to the police on 13/10/2004 and the medical examination was on 19/10/2004.

The complainant said that the two appellants were known to him before. This was admitted by both appellants. And that he was able to identify them that night because there was moonlight. The evidence of PW2 was in relation to a different incident not subject of this charge.

PW3 said he knew nothing of this incident. PW4 was the police who with other officers arrested the appellants on 25/2/2005.

When put to their defence the appellants and each of them made unsworn statements they denied the offence but admitted that the complainant is a relative and therefore he knew them well.

I have perused the record. It is clear that the only evidence supporting the prosecution case came from the complainant. But the medical evidence is consistent with the injuries the complainant suffered. As for the identification of the appellants there was moon light which has not been denied by the appellants and most importantly the complainant and the appellant were well known to each other being members of

the same family. I find the Trial Magistrate in a well reasoned judgment took time to consider all the evidence before him including the unsworn statements of the appellants.

I find the evidence before the court was sufficient to support conviction according to the required degree of proof beyond reasonable doubt. I see no reason to interfere and I dismiss the grounds of appeal as without merit. The sentence prescribed under this charge is imprisonment for 14 years. The sentence imposed of seven years imprisonment is neither harsh nor excessive in the circumstances of this case.

The appeal is dismissed.

Dated this 17th January, 2007.

J. N. KHAMINWA

JUDGE