

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

Criminal Appeal 2 of 2002

ANTHONY NJERU NJURA.....APPELLANT

VERSUS

REPUBLICRESPONDENT

JUDGMENT

In Criminal Appeal No. 2 of 2002.

Anthony Njeru Njura –Vs- Republic

The Appellant who was not represented by Advocate appeals against sentence of imprisonment for 7 years with a police supervision order for a period of 5 years thereafter. He was charged with an offence of Robbery contrary to section 296 (1) of the penal code.

On 12.1.2001 around 1.00 p.m. the complainant was walking going to the market via Shauri Estate. He met 2 young men who held him by the throat and knocked him down taking away shs.1500/= from him. He did not recognize the two men. On cross examination he said there were many members of public. Then he told the court that one of the two “ *as this one here*” pointing to the accused in the dock. He also told the court that on 27/1/2001 he was called to the police station to an identification parade where he picked the accused. He further disclosed that in that morning he had purchased some beer worth 50/- from the accused’s brother Kiosk in presence of the accused. Before the next witness was called on 6.11.2001 there was change of Magistrate. The record shows “*The options and section 200 C.P.C are explained. Accused opts we continue from where (the court) it stopped last*”. PW2 testified saying she was residing in Shauri Estate in Embu. She is a trader in vegetables at the market. On that day at 1.00. p.m. she was going home for lunch. She saw 3 people struggling outside and for fear she entered her house and locked. While inside she heard Mzee Mwaniki say he was being robbed. Later she made a statement. She said the accused was one of those persons who attacked the complainant. Nevertheless she was not able to recognize them as she did not know them before that day.

PW3 testified that he had a meat kitchen in that market and that the complainant came to the kitchen at about midday (12.00 p.m.). He bought meat and ate. While leaving he met Njeru and Nyaga. Njeru held complainant knocked him down and lay on him. Nyaga joined the struggle and took out of Mwaniki’s pocket money and fled. PW3 had known the Appellant since school days more than ten years.

In his defence the appellant confirmed that his brother was running a business of selling traditional liquor and after work of unloading Mombasa buses, he helps in selling the liquor. This confirms the complainant statement that the accused was known to him and they had met that morning at the beer selling place. The Appellant called a witness Francis Mugendi who said he did not know anything about the happening of the year 2001. Appellant 2nd witness also gave evidence and confirmed that he knew nothing of the present charge as it happened when he was in prison.

Upon perusal of record there is no evidence that an identification parade took place. The forms were not produced nor did the officer conducting the parade attend to give evidence. This is admitted by State Counsel. The court will disregard this evidence by complainant.

On the other hand I find that there was other evidence on the identification of the Appellant. PW3 Roy Mwaniki was in a very good position to identify the appellant he knew him for a long time. The Appellant even confirms that they lived in the same area. The Complainant was attacked as he left the meat kitchen of this (PW3) witness. It was all in broad day light.

Upon perusing the Judgment and the evidence presented by the prosecution it is clear that the evidence relied upon was firm and consistent and the Trial Magistrate was correct in convicting the appellant as charged. The sentence of 7 years imprisonment is not excessive maximum sentence being 14 years.

However the punishment of corporal punishment is no longer lawful and the same is set aside.

I otherwise therefore find no reason to interfere and I hereby dismiss this appeal.

Dated on 28th day of February, 2006.

J.N. KHAMINWA

JUDGE