



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

Criminal Appeal No. 166 of 2000

SIMON LOKWACHARIA NAKOR.....APPELLANT

Versus

REPUBLIC.....RESPONDENT

(Being an appeal from the judgment of S. M. Kibunja, Senior

Resident Magistrate, dated 13th April, 2000, in the Senior resident

Magistrate's Court at Nanyuki, Criminal Case No. 882 of 1999)

JUDGMENT

The Appellant, who was the First Accused among four accused persons before the trial magistrate, was convicted on five counts of robbery with violence contrary to section 296 (2) of the Penal Code and on a substituted charge under section 306 (b) of the Penal Code from robbery with violence contrary to section 296 (2). He was sentenced to death on each of the robbery counts and sentenced to serve one year imprisonment on the substituted offence.

All the six offences were committed on 25th day of April, 1999 at Voice Farm Ngare Nyiro in Laikipia District of the Rift Valley Province where the Appellant and his co-accused were said to have been armed with dangerous or offensive weapons namely, rifles, simis, swords, rungus and iron bars.

In count one the Appellant and his co-accused were alleged to have jointly robbed Jackson Maina Kibocha who gave evidence as PW2; in count two they were alleged to have similarly robbed Duncan Ngatia Mwaura who was PW3; in court three the victim was Ann Muthoni Wanjiru who was PW4; in count four Ann Nyaruai Kahu who was PW5; count five Jacinta Waguthi Gathirimo who was PW6 and in the substituted count Godfrey Wahome Kimaru who was PW7.

According to the evidence adduced for the prosecution, at about 8.00 p.m. on 25th April, 1999 PW2 driving a motor vehicle KAE 313H Toyota Hilux, with PW3 as a passenger, left home to visit Godfrey Wahome Kimaru PW7. When they stopped the motor vehicle outside the home of PW7, two people with guns emerged and ordered them out of the motor vehicle and to kneel down and hand over the vehicle keys. PW2 and PW3 complied and thereafter were frog marched into the home of PW7 where they were taken to a house where they were made to lie on the floor face downwards like the nine victims they had found in that house. While there, PW3's pair of shoes was taken as they were searched.

The robbers asked PW6 to give them money and she was further told to slaughter and cook a chicken which she did and the robbers ate. The victims lying down were being guarded by three of the five robbers. About midnight the robbers locked their victims in the house and drove away in the motor vehicle of PW2.

Some minutes after the robbers had left the victims went out through a rear door and PW2 and PW3 went to police station to report the incident.

PW2 told the court that by the time his motor vehicle was recovered at Solai in Nakuru District, the vehicle battery, spanners, three forms, tarpaulin, were missing.

On the night of the robbery, there was moonlight and in Jacinta's house where the victims were under guard by robbers there was light from a hurricane lamp. But although PW2 and PW3 could see the long guns the two robbers who met them outside the home of PW7 had, PW2 could not identify any of the robbers. PW3 said he identified the Appellant as the person who took his pair of shoes as PW3 had to sit down to remove the shoes and got the chance to look at the person who had ordered him to remove the shoes.

As the victims were lying down on their stomachs, they were being searched for valuable items which were being taken, a chicken was slaughtered, cooked and eaten by the robbers, and under instruction of the robbers and in that respect PW6 Jacinta Waguthi told the court how the three people, one with a gun, entered her house when she was there with Kariuki and Wamucii and claimed to be policemen. They ordered them to lie down and give money. As the owner of the house they asked for, she rose up and they pushed her around searching the house. They took her shs.5000/- before one took her outside the house and raped her. The man had a gun and thereafter told her he wanted to eat meat. He took her to the house of PW4 where he ordered her to take one hen. She took the hen and then returned to PW6's house where the man cut the hen's neck and told her to assist him remove the feathers. She then roasted the chicken meat and when it was ready the robbers ate it.

PW6 continued to say that the same person with the gun took shs.5000/- from her handbag. Out of the first shs.5000/-, shs.4000/- had been found below a mattress and shs.1000/- on a bedside table. Also her wrist watch and seven compacts were taken before the robber went away leaving the victims, including PW2 and others who had been taken to that house by the robbers, in that house.

PW6 told the court she had seen the man with the gun who was with her very well as there was a hurricane lamp in her house, moonlight outside as the man raped her and they walked to and fro the house of PW4 and thereafter the man assisted her for 30 minutes to prepare the chicken for a meal and PW6 subsequently served the robber with the meal before the robbers left. She said when she saw the man in the identification parade, she identified him and that he was the Appellant. She also identified five out of the seven stolen compacts which had been recovered.

Ann Muthoni Wanjiru, PW4, said she was in her house at about 7.30 p.m when three people, one with a gun, went into her house. Others had panga and sword. They said they were policemen. She said although she had a lamp she was not able to see their faces. They searched and took some money as the one who wanted food was given ugali and ate while PW5 Ann Nyaruai Kahu was lying down as ordered; as the robbers moved out and back, including the time PW6 was taken there to take the hen which PW6 talked about. PW4 told the court she was raped just as PW6 also said she was raped in the process.

P.C. Kennedy Magara, PW11, and P.C David Kiiru, PW12, both of Subukia police station told the court how the Appellant, under arrest, was taken to Subukia Police station and subsequently led them, together with other police officers to a house at Munanda Farm from which they recovered stolen items such as motor vehicle battery, spanners, tarpaulin, all identified by PW2; a pair of shoes identified by PW3; compacts identified by PW6.

The evidence of the robberies which took place at one place at Voice Farm Ngare Ngiro on 25th April, 1999 at the same time, put together with the evidence of PW6 as to the identification of the Appellant,

both at the robbery scene and in the police identification parade as well as the evidence of recovery of some of the items stolen at the said robberies after the Appellant had led the police to the house in which those stolen items were and the subsequent identification of the recovered items by respective owners, corroborated the evidence of the appellant's confession which had been retracted and was admitted after a trial within a trial.

In our view, the Appellant was properly convicted and we find no merits in this appeal. The same is hereby dismissed.

Dated this 31st day of March, 2006.

J. M. KHAMONI

JUDGE

H. M. OKWENGU

JUDGE

Present:

Appellant in person.

Mr. Orinda for the Republic

Martin Mwangi – court clerk