



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA OF KISII

Criminal Appeal 192 & 193 of 2004

1. DICKSON OKELLO OUKO

2. OSBON ANDITI OUKO..... APPELLANTS

VERSUS

REPUBLIC RESPONDENT

(From original conviction and sentence of the SRM's court at Homa-Bay in criminal case No. 695 of 2002)

JUDGMENT:

This appeal No. 192 of 2004 brought by DICKSON OKELLO OUKO and appeal No. 193 of 2004 brought by OSBON ANDITI OUKO were consolidated and heard simultaneously. Both originated from the conviction and sentence in HOMA-BAY SENIOR RESIDENT MAGISTRATE criminal Case No. 695 of 2002. In that case both appellants were charged with one CHARLES KICHA OLIMA with two counts of Robbery with violence contrary to s.296 (1) Penal Code and a 3rd count of being in possession of a firearm contrary to s.43(3) of the Firearms Act. CHARLES KICHA OLIMA who was the third accused then was acquitted of all the 3 charges.

However both appellants were found guilty on all the three charges. In counts 1 and 2 they were each sentenced to death and in count 3 jailed for 5 years.

In the 3rd count there was a fourth accused one SAMUEL KOSWAGO. Though he participated in the trial the trial court was silent when it made its ruling after the close of prosecution case. He was not put on his defence neither did the court state whether it had acquitted him.

The prosecution case was that on 15th day of April 2002 one ABDI FARAH the complainant in the first count was in Mbita. He buys fish along the beach and sells them to Wet Fish Processing Company in Nairobi. He was in a motorboat. The Coxswain was JARED OMONDI OPIYO (PW3). Also in the boat was WILLIAM OKELLO AGUNDA (PW4) a loader. PW1 who was in control of the boat gave a lift to A.P.X. JOHN ODHIAMBO (PW2). There was also a lady in the boat. Apparently they were to sail along the beaches where PW1 had agents to buy fish for him. They went to UKULA Beach where PW1 left money to his agents. Before sailing away two men asked for a lift to UTERERE beach. Since they were sailing there PW1 accepted to give them a lift. They set off from Ukula Beach. One of the two men had a bag.

Ten minutes after leaving ukula one of the two men who witness identified as 1st appellant removed an

A.K.47 gun from the bag he had. He ordered the policeman (PW2) to lie down as well as the others except the coxswain. He and the other man who is the 2nd appellant ordered PW1 to produce all the money he had. They took shs.120,000/- from him. They also took shs.10,000/- from John Odhiambo (PW2) the policeman and shs.17,000/- from the lady. They then ordered the coxswain to sail towards Rangwe. Near Rangwe primary school they told him to stop and they embarked with their loot. The victims raised an alarm but the appellants disappeared. They went and reported at SINDO D.O.'s office and then Mbita Police Station.

On 28th May 2002 PW2 spotted the 2nd appellant at Sindo beach. He reported to APs and he was arrested and taken to police station. After interrogation he led to the arrest of the first appellant. They were interrogated and led police to the home of the then 3rd accused where the gun was recovered.

Subsequently identification parades were held. The two appellants were identified by the witnesses.

The gun was also sent to the ballistic expert for examination. He confirmed it was indeed an A.K. 47 rifle though it had a false wooden magazine.

Both appellants denied committing the offences. The first one said that he was a businessman at Rongo. He said he was arrested on 30th April 2002 at his shop in Rongo. He was taken to mbita police station and later charged.

The second appellant said he was arrested on 29th May 2002 while at mbita market doing his business. He said he knew nothing about the charges.

The trial magistrate after analyzing the evidence was satisfied that the three charges were properly proved against the two appellants and convicted them. This being a first appellate court I have carefully re-evaluated the evidence on record and find that the two appellants were properly convicted. The evidence against them was overwhelming and unchallenged. The incident took place in broad daylight. It was at 8.30 a.m. The witnesses – PW1, 2,3 and 4 all told court that they were able to see the two appellants very clearly. The two had not disguised their faces in anyway. PW2 saw the 2nd appellant weeks later and was able to identify him. He identified him to A.P.s who arrested him. Later an identification parade was held and he was identified by PW3 and 4. When the first appellant was arrested another parade was held and he too was identified.

PW1 the complainant in count 1 did not take part in the parade but he explained that when they were arrested he was away in Garissa.

The appellants were just the two of them when they robbed PW1 and 2. They did not injure them but they were armed with a dangerous weapon an A.K. 47 rifle. They threatened to use violence on their victims.

PW1, 2,3,4, & 5 all identified the gun produced in court as the one the 1st appellant produced from his bag and threatened them with. It was recovered much later but they were able to identify it. PW2 was a police officer and knew about guns and he confirmed the gun the 1st appellant produced was an A.K. 47 rifle.

The magistrate properly considered the evidence before him and the defences of the appellants. He made a proper finding that the two appellants robbed PW1 & 2 of their money. They had a gun and they had no certificate for it.

We therefore find no merit in the appeals of both appellants and the same are dismissed.

Dated and delivered at in Kisumu on 24th day of March 2006.

BAUNI

JUDGE

MASIME

JUDGE