



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KERICHO
Criminal Appeal 33 of 2002

ROBERT KIPTANUI BETT APPELLANT

VERSUS

REPUBLIC RESPONDENT

JUDGMENT

The appellant Robert Kiptanui Bett was charged with various offences before the Senior Resident Magistrate's Court at Sotik. The appellant was convicted and sentenced in four different cases. During the hearing of these appeals all the appeals being criminal appeal numbers 90 of 2002, 36 of 2002, 34 of 2002 and 33 of 2002 were consolidated under the holding Criminal Appeal number 33 of 2002.

In criminal appeal number 90 of 2002 the appellant was charged with the offence of breaking into a workshop contrary to section 306 of the Penal Code and stealing contrary to section 279(b) of the Penal Code.

The particulars of the offence were that; During the night of 10th and 11th day of January, 2002 at Sotik Township in Bureti District within Rift Valley Province, the appellant broke and entered into a building namely workshop with intent to steal and did steal therein one arm chair valued at Kshs.1,250/- the property of Jane Chesang.

The appellant pleaded guilty to the charge and was convicted and sentenced to serve 24 months imprisonment. The appellant has now appealed against the conviction and sentence.

In Criminal Appeal No. 36B of 2002, the appellant was similarly charged with the offence of stealing. On the night of 30th June and 1st July, 2001 at Sotik Township in Bureti District within Rift Valley Province, jointly with others the appellant broke and entered a building used as shop with intent to steal therein and did steal one camera canon valued at Kshs.5,000/- the property of Paul Kimutai Ngeno. The appellant was charged with the alternative charge of handling stolen property. The appellant pleaded guilty and was sentenced to 30 months imprisonment.

The appellant being dissatisfied with the conviction and sentence has now appealed before this court.

In Criminal Appeal No. 34 of 2002, the appellant was charged with workshop breaking contrary to section 306(a) and stealing contrary to section 279(b) of the Penal Code.

The particulars of the offence were that; During the night of the 14th and 15th day of February, 2002 at Sotik Township in Bureti District of the Rift Valley Province jointly broke and entered into a building namely workshop with intent to steal and did steal therein one set of Morris chairs valued at Kshs.3,000/- the property of William Ondieki.

The appellant also faced on alternative charge of handling stolen goods contrary to section 322(2) of the Penal Code. The appellant similarly pleaded guilty and was convicted and sentenced to 36 months imprisonment in each count to run concurrently. In Criminal Appeal no. 33 of 2002, the appellant was charged with the offence of house breaking and stealing. The particulars were that on the 20th day of February, 2002 at Sotik Township in Bureti District within Rift Valley Province, broke and entered into a dwelling house of Joseph Ochieng with intent to steal and did steal thereon a video deck make Sanyo, two remote controls and one radio cassette make National all valued at Kshs.31,000/- the property of Joseph Ochieng.

The appellant faced an alternative charge of handling stolen property. In a similar fashion the appellant pleaded guilty and was convicted and sentenced to 48 months imprisonment.

Being dissatisfied with both the conviction and sentence, the appellant has appealed and sought for the conviction and sentence to be quashed. During the hearing of this appeal, Counsel for the appellant presented the three following principle grounds of appeal.

- Ø ***Firstly, he argued that the prosecution of all the criminal cases by police sergeant Muniko is a nullity.***
- Ø ***Secondly, the plea was not taken since the elements of the offences were not clearly explained to the appellant in the language of his choice and***
- Ø ***Lastly, the charges that the appellant faced in different criminal cases were connected together by proximity of time, place so as to constitute one transaction and therefore should have been in one case instead of a multiplicity of suits whereby the appellant was convicted for each of the offences separately.***

The appeal was not apposed by the state. The Learned Senior State Counsel conceded that the prosecution was undertaken by sergeant Muniko who was not qualified.

As it is the responsibility of this court to re-evaluate and reconsider the evidence and come up with my own independent judgment, I have gone through the proceedings and it is clear from the records that the prosecution was undertaken in all the four cases by Police Sergeant Muniko.

Section 85 of the Criminal Procedure Code provides:

“The Attorney General, by notice in the Gazette, may appoint public prosecutors for Kenya or for any specified area thereof and either generally or for any specified case or class of cases.

(2) The Attorney-General, by writing under his hand, may appoint any advocate of the High Court of person employed in the public service, not being a police officer below the rank of Assistant Inspector of police, to be a public prosecutor for the purposes of any case.”

Certainly, the rank of sergeant Muniko is beneath that of the

Assistant Inspector and the entire prosecution is therefore a nullity in view of the provisions of the law and decided cases of the Court of Appeal on this aspect of the law (*see Elirema & Another vs Republic KLR 2003 Page 537*).

As regards the third ground of appeal, I am in agreement with the submission by counsel for the appellant that in all the four different criminal cases the offences were so connected together by proximity of time, place of commission so as to constitute one transaction and therefore should have been in one case and therefore by charging the appellant separately he suffered prejudice (*See case of Odero vs Republic (1984) KLR 622*). In this regard therefore this appeal is allowed, and the appellant is set at liberty unless otherwise lawfully held.

Judgment read and signed on 16th March, 2006

M. KOOME

JUDGE