

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA OF KISII

Criminal Appeal 157 of 2005

AMOS CHACHA WEREMA APPELLANT

VERSUS

REPUBLIC RESPONDENT

(From original conviction and sentence of the RM's court at Kehancha in criminal case No. 57 of 2004)

JUDGMENT:

Appellant was convicted by Resident Magistrate Kehancha for the offence of preparation to commit a felony. Particulars were that on 30th June 2004 at Nyamaharaga village in Kuria District he was found with an offensive weapon namely an axe with intent to commit a felony. He was sentenced to 10 years imprisonment.

On the fateful night at 10.30 p.m. JOHN NCHAGWA (PW1) was walking home from Isabania market. He met a man who started following him. He became suspicious and went back to Isabania and reported to police. Police officers went there and after a while met the appellant. He was told to stop but instead he produced an axe and challenged the police. He was however arrested. He had dark sunglasses. He was charged.

In defence the appellant said that on the alleged night he was at his home all along. He was arrested later by two policemen.

The evidence adduced was clear. Appellant was arrested by PW2 & 3. He had an axe and had dark sunglasses. PW1 identified him as the person who had followed him in a suspicious manner. The finding of the magistrate was proper. A man armed with an axe and wearing dark sunglasses at 10.30 p.m. in the night cannot be up to any good. He must have been preparing to commit a crime. His conviction therefore was proper and the same is upheld.

As to sentence he was jailed for 10 years. He was a first offender and said he was an orphan. 10 years imprisonment was harsh and excessive, in the circumstances. I therefore allow the appeal against sentence and I set aside the sentence of 10 years and since he has already served over one year I substitute it with one of the period already served.

Appellant be set at liberty forthwith unless otherwise legally held.

Dated 14th June 2006.

KABURU BAUNI

JUDGE

Cc – Mobisa

Mr. Kemo for State

Appellant present