REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAKURU

Criminal Appeal 20 of 2004

(From original conviction and sentence in Criminal Case No.1540 of 2003 of the Chief Magistrate's Court at Nakuru – S. MUKETI, SRM)

TERESIA KAPESA MUGAMBI…….....……..APPELLANT

VERSUS

REPUBLIC…….....……...……ACCUSED

JUDGMENT OF THE COURT

The appellant was jointly charged together with other five people for the offence of attempted robbery with violence contrary to **Section 297(2)** of the Penal Code. The particulars of the offence were that on 2nd July 2003 at Kamptembwa estate in Nakuru District within the Rift Valley Province, the appellant jointly with others not before court being armed with dangerous or offensive weapon namely home made pistol, attempted to rob John Gichuru Njoma of his motor vehicle registration number KAJ 260T, Nissan Sunny, valued at Kshs.200,000/- and at or immediately before or immediately after the time of such robbery threatened to use personal violence to the said John Gichuru Njoma.

The appellant was tried and convicted of the said offence and was sentenced to death. She was aggrieved by the said sentence and preferred this appeal.

The prosecution case briefly stated was as follows:- **PW1 John Gichuru Njoma,** a taxi operator, testified that on 2nd July 2003 at about 8.30 p.m. he was approached by the appellant who requested him to take her to Kaptembwa area. The appellant told her that she had come from a funeral in Nyahururu. They agreed at a charge of Kshs.150/-. When they reached Kaptembwa area she asked him to stop outside a house which had no lights. PW1 moved and stopped near a gate to a certain house and put on the reverse lights of his car. Suddenly he saw some people who emerged from behind the car. PW1 said that the appellant was delaying in alighting from the car and he told her to close the door and he started moving. He turned the vehicle and put on the car lights and he saw three people. He stopped the vehicle and asked the appellant to jump out of the car. She refused to do so and in the mean time two people accosted him pointing a gun at him. He managed to drive on with the appellant still in the vehicle and the appellant asked PW1 to stop the vehicle so that she could come out. PW1 refused and he drove to Kaptembwa police station and reported the incident. The appellant was then interrogated by the police. Later PW1 identified the people who allegedly threatened him with a gun on the material night.

In her unsworn defence, the appellant stated that on 2nd of July 2003 she had gone to Nyahururu to attend her father's funeral and she got back to Nakuru at about 7.45 p.m. She decided to hire a taxi to take her to her house at Kaptembwa area. She asked PW1 to drop her near a certain canteen and while she was preparing to alight from the car, they were accosted by some people. She was then driven to a

police station where she was dropped as a suspect and police interrogated her. She denied having committed the offence as charged.

In her judgment, the learned trial magistrate held that the appellant's conduct on the material night was indicative of her involvement in the attempt to rob PW1 of his motor vehicle. The learned magistrate was of the view that the appellant instructed PW1 to stop at a dark place so that the other co-accused could get an opportunity to rob PW1 of his motor vehicle. She also blamed the appellant for dragging her feet when she was asked to alight from the motor vehicle by PW1. The trial magistrate concluded that the appellant had an ulterior motive in hiring the vehicle.

The appellant stated in her grounds of appeal that the learned trial magistrate erred in convicting her without any sufficient evidence to connect her with the alleged offence and in particular in believing the uncorroborated evidence of PW1.

Mr. Koech, learned state counsel, did not support the conviction of the appellant, and in our view, rightly so. He said that the evidence of PW1 was not sufficient to show that the appellant had a common intent with the people who attempted to rob PW1 of his motor vehicle. We agree with Mr. Koech entirely. In our view, the evidence of PW1 was totally insufficient to warrant a conviction on such a serious charge as the one which the appellant faced. While it is trite law that an accused person may be convicted on uncorroborated evidence of a single witness, in this particular case, the trial magistrate should have required some additional evidence to corroborate that of PW1 before she could convict the appellant. With respect to the learned trial magistrate, we are of the view that she misdirected herself when she held that the appellant behaved in a manner that suggested that she was in collaboration with the people who accosted PW1 simply because she asked PW1 to stop his taxi in a place which was not well lit and was slow in alighting from the vehicle. That in itself does not point any guilt finger at the appellant. We therefore agree with Mr. Koech that the conviction was unsafe and proceed to allow the appeal, quash the conviction and set aside the sentence that was pronounced by the trial court. The appellant should be set at liberty forthwith unless otherwise lawfully held.

DATED at Nakuru this 12th day of October, 2006.

M. KOOME

JUDGE

D. MUSINGA

JUDGE

Judgment delivered in open court in the presence of the appellant and N/A for Attorney General.

D. MUSINGA

JUDGE