

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NYERI

Criminal Appeal 104 of 2003

PETER MAINA MWANGI APPELLANT

VERSUS

REPUBLIC RESPONDENT

(Appeal from original Judgment and Conviction in Senior Resident Magistrate's Court at Karatina in Criminal Case No. 225/02 dated 6th May 2003 by Mr. J. N. Nyaga – S.R.M. – Karatina)

J U D G M E N T

Peter Maina Mwangi (hereinafter referred to as the appellant) was tried together with James Kinyua Mwangi before the Senior Resident Magistrate Karatina on three counts as follows:-

Count 1 – ATTEMPTED ROBBERY WITH VIOLENCE CONTRARY TO SECTION 297 (2) OF THE PENAL CODE.

1. JAMES KINYUA MWANGI (2) PETER MAINA MWANGI

On the 1st day of May 2002 at Karatina township in Nyeri District within Central Province, jointly armed with offensive weapon namely a knife attempted to rob JACKSON GATHIGIRA KABIRU of his mobile phone make Motorola T 2288 valued at Ksh.5,000/= and at or immediately before or immediately after such attempted robbery threatened to use actual violence to the said JACKSON GATHIGIRA KABIRU.

Count II – ASSAULT CAUSING ACTUAL BODILY HARM CONTRARY TO SECTION 251 OF THE PENAL CODE.

1. JAMES KINYUA MWANGI (2) PETER MAINA MWANGI

On the 1st day of May 2002 at Karatina township in Nyeri District within Central province, jointly unlawfully assaulted PATRICK MUITA MURIMI thereby occasioning him actual him bodily harm.

Count III – ATTEMPTED ROBBERY WITH VIOLENCE CONTRARY TO SECTION 297 (2) OF THE PENAL CODE.

1. JAMES KINYUA MWANGI (2) PETER MAINA MWANGI:

On the 1st day of May 2002 at Karatina township in Nyeri District within Central Province, jointly armed with offensive weapon namely a knife attempted to rob FESTUS KIPRONO KOECH of his money Shs.1,500/= and at or immediately before or immediately after such attempted robbery threatened to use actual violence to the said FESTUS KIPRONO KOECH.

The trial magistrate found the appellants not guilty of the first two counts. In respect of the 3rd count of attempted robbery he found that there was no assault on the complainant. He therefore found the appellant and his colleague not guilty of attempted robbery but found them guilty of attempted stealing

from the person contrary to section 279 (a) as read with section 389 of the Penal Code and convicted the appellant and his colleague of attempted theft and sentenced them to serve 2½ years imprisonment with 4 strokes of the cane. Being dissatisfied the appellant has now brought this appeal contending that the trial magistrate erred in failing to find that the case against the appellant was a frame up.

Learned State Counsel Mr. Mugwe has urged this court to dismiss the appeal on the grounds that there was sufficient light which enabled the complainant to identify the appellant, and that since neither the complainant nor his witness knew the appellant before there was no need for any of them to frame up the appellant.

I have carefully reconsidered and evaluated the evidence and cannot but concur with the learned State Counsel, that although the offence occurred at night there was sufficient light which enabled the complainant see and identify the appellant as his assailant barely 30 minutes after the commission of the offence. The appellant is lucky to have escaped with a conviction under section 279 (a) as there was sufficient evidence that he was armed with a knife and not only threatened the complainant with violence, but in fact actually punched the complainant. Assault was therefore established and the appellant ought to have been convicted of the offence of attempted robbery. I therefore find no merit in this appeal and do dismiss it in its entirety.

Dated signed and delivered this 5th day of November 2006.

H. M. OKWENGU

JUDGE