

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
CRIMINAL DIVISION

CRIMINAL APPEAL NO. 1329 OF 2001

(From Original Conviction and Sentence in Criminal Case No.23376 of 2000 of the Chief Magistrate's Court at Makadara).

PETER KINYUA KIHARA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The appellant was charged with robbery with violence contrary to Section 296(2) of the Penal Code. He was tried, convicted and sentenced to death. His appeal to this court is against both conviction and sentence.

The prosecution case is that PW1 operates a taxi business. On the 26th August 2000 at around 11.10 p.m. while he was outside Mahutiini bar waiting for customers the appellant in company with another man and a lady approached him and wanted to hire his taxi. PW1 was with PW2. PW1 asked for Shs.200/= but the appellant suggested Shs.150/= while the other man suggested Shs.100/= but the lady said that Shs.200/= was fair. PW1 agreed to take them for Shs.150/=. The appellant sat at the rear with the lady together with PW2 while the other man sat at the co driver's seat. On the way the man who sat at the co-driver's seat produced a pistol and ordered PW1 to drive towards Kariobangi Estate. That other man fired in the air, to demonstrate that what he had was a pistol and not a toy. That man ordered PW1 to stop so that he could take charge of the taxi. PW1 stopped. But while that other man alighted to come to the driver's seat, PW4 who also did taxi business arrived. When he saw the taxi of PW1 stopped on the road he stopped to find out if PW1 had any problem. This prevented that other man from getting to the driver's door. That short delay enabled PW1 to gather courage and drive away at high speed. PW4 saw that other man brandishing a pistol as he escaped. PW1 drove at high speed while screaming until he reached Outspan bar with the appellant and the lady inside. When PW1 stopped at Outspan the appellant and the lady tried to escape but since the screaming had alerted the patrons they came out and chased them and they were arrested. PW5 who is a watchman at Outspan saw when the PW1 came driving at high speed and screaming until he stopped at the bar. He witnessed when the appellant and the lady jumped out of PW1's taxi when it stopped and tried to escape. The two were chased and arrested and were subjected to mob justice until they were rescued by the police. Because the appellant and the lady has sustained serious injuries, they were rushed to Kenyatta National Hospital for treatment. They were admitted for 2 weeks.

The appellant does not deny that on the material date he was drinking with that other man and the lady. His only explanation was that when he entered the bar he found the lady whom he knew as Nyambura drinking with that man. They offered him some beers and in obliged. He sat drinking with them until about 11 p.m.. when they decided to go away.

They approached PW1 to take them away in his taxi. He was surprised on the way when that man who was with them, turned violent and he ordered PW1 at gun point to drive to Kariobangi Estate. When they reached near Outering roundabout he ordered PW1 to stop so that he could take charge of the taxi. But before that man could get to the driver's door PW4 came driving from behind and when he

found the taxi of PW1 stopped on the road side, he stopped since he knew him to find out what the problem was. When that man saw PW4 stop, he brandished the pistol and escaped. This made PW1 take off at high speed while screaming until he reached Outspan bar. Because of the screaming people came out and started beating him and the lady mistaking them to be robbers. But fortunately police arrived and rescued them. They were rushed to Kenyatta National Hospital for treatment since they had sustained serious injuries. They were admitted for 2 weeks and he was charged with this offence after he had been discharged from hospital. Nyambura disappeared after she was discharged

He further told the court that he was surprised to learn that the man he was drinking with was a dangerous man. The trial magistrate rejected the appellant's defence, and rightly so. There was ample evidence to prove beyond any reasonable doubt that the charge of robbery with violence contrary to Section 296(2) of the Penal Code was proved and that the appellant was properly convicted.

In the result we see no merit in the appellant's appeal. The appeal is dismissed.

Orders accordingly.

Dated and delivered at Nairobi this 8th day of February 2005.

J.L.A. OSIEMO

JUDGE

FRED OCHIENG

JUDGE