

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL APPEAL 255 OF 2002

PATRICK KERANDI NYAKUNDI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The appellant has appealed against the original conviction and sentence of the Principal Magistrate Court, Nyahururu Criminal Case No. 2255 of 2002. In that case, the appellant had been charged for two offences of attempted rape contrary to Section 141 of the Penal Code. The 3rd count against the appellant is that of creating disturbance in a manner likely to cause a breach of peace contrary to Section 95 (1) of the Penal Code. Besides the above, the appellant was also charged for two alternative counts of indecent assault. After a full trial, the learned Magistrate found the appellant “guilty” for all the first three counts.

The appellant was later convicted accordingly. Consequently, the learned Magistrate viz, Mr. Nicholas Ateya - then Senior Principal Magistrate, Nakuru sentenced the appellant to 5 years imprisonment for count one and two. The appellant was also to be subjected to hard labour and 5 strokes of the cane on of the two counts. The learned Magistrate also sentenced the appellant to 6 months imprisonment for count three. He concluded by ordering that the sentences should run concurrently. During the hearing of the appeal, the appellant complained that he had previously been charged for the offence of rape in the year 2000. However, during the trial, he could not remember the file number of that particular case and hence the trial Magistrate could not help him. According to the appellant, the complainant was the same and that he had denied committing the offence. Apart from the above, the appellant pleaded with the Court to help him since he has suffered in prison.

On the other hand, the State through Mr.Koech, State Counsel has supported the conviction and sentence. According to Mr. Koech, the appellant was properly convicted. Mr. Koech narrated the evidence of the first complainant of how she was followed by the appellant who attacked her before removing her trousers and pants. Consequently, the 1st complainant screamed and the PW4 rushed to the scene and saw how the appellant was struggling with the complainant. Besides the above, Mr. Koech also recalled that the appellant had earlier made advances on the PW1 who rejected the same. The PW2 who is the mother of the PW1 narrated how the appellant had knocked her house while following the PW1.

On being repulsed, the appellant threatened to stab the PW2. On the other hand, the PW5 who is the complainant in Count II also explained what had transpired. After the PW1 and PW5 properly identified the appellant, he was arrested with a knife that he wanted to use. In conclusion, the learned Counsel submitted that the appellant had a previous conviction and that he had been properly convicted and that the sentence was lawful. In reply, the appellant stated that he had been arrested in his house where the knife was taken from. The appellant also claimed that he had been “acquitted” for a similar offence in Court No. 5.

This Court has carefully perused the above together with the record of appeal that contains the Judgment of the learned Magistrate. This Court has a duty to evaluate and examine the evidence afresh and reach its own conclusion. I am also alive to the fact that this Court never had the advantage nor opportunity to observe the manner and demeanour of the witnesses. It is obvious in this case that the evidence of the PW1 and PW5 was overwhelming. They all explained succinctly what had transpired on that night. None of them had any grudge against the appellant to motivate them to frame him for such serious offences.

Having carefully read the judgment of the learned Magistrate, I hereby find that he had evaluated the evidence properly and reached the correct conclusion. Since the evidence was overwhelming and water-tight, I hereby uphold all the three convictions. On the other hand, I hereby confirm the sentence that was passed for each count. The same are not only valid but also lawful. However, I hereby set aside the 5 strokes of the cane on each limb since corporal punishment has been outlawed. It is only to that extent that the appeal succeeds.

The upshot is that I hereby dismiss the appeal. Right of appeal explained.

MUGA APONDI

JUDGE

Judgment read, signed and delivered in open Court in the presence of the appellant and

Mr. Gumo, Assistant Deputy Public Prosecutor.

MUGA APONDI

JUDGE

6TH APRIL, 2005