REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL APPEAL NO. 154 OF 2003

MWANZIA MULI……..APPELLANT

VERSUS

REPUBLIC……..RESPONDENT

J U D G E M E N T

The appellant Mwanzia Muli had been charged before Kitui RM's court in CRC 1509/99 with 6 counts of demanding money with menaces on various occasions from two complaints.

He was convicted on the 6 counts and sentenced to 3 years imprisonment on each count. The sentences were ordered to run concurrently. He was dissatisfied with the judgement of the trial magistrate and appeals against both convictions and sentence. The appellant has cited 4 grounds in his petition of appeal which are that the magistrate misdirected himself on law and fact by convicting the appellant on evidence which had contradictions and had doubts that he based conviction on hearsay, and relied on unsubstantiated allegations by the complaints and that the sentence was manifestly excessive.

The appeal was opposed and Mr. Omirera for the state made submissions in response. I have considered both sides of the submissions.

The 1st question the court asks itself is whether the prosecution adduced sufficient evidence to convict appellant or it was contradictory and un reliable as alleged in the grounds. PW1 testified in respect of counts 1, 2, 3, and 6. PW1 told court that he was alone when he was accosted by the appellant on these different occasions. The appellant is a person he had known for many years. PW1 said there was light from the lamp when appellant came to his shop. Though PW1 reported all these incidents to police, no action was taken and no police officer ever came to court to testify that such report was ever received at police station. At first he said he feared to report. PW1 denied that the threats were ever written.

PW2 is not just anybody but a cousin to the appellant. This fact was never denied. PW2 said the first demand was made at

10.00a.m. The 2nd time they met at the market. This was not an issue of identification but recognition. Both PW1 & 2 knew the appellant well. There is no requirement in law that evidence of a single witness heading corroboration. Some offences are only witnessed by one witness and it cannot be said that there must be witnesses in order for the court to find that a crime was committed. The court considers the evidence of each case according to its own special circumstances.

PW1 and 2 have told court how they were accosted. It was upto investigating office to call the relevant witnesses for example the officers whom the witnesses reported to and if necessary, the OB in which reports were booked. It seems the investigating officer handled this case casually just as the police to

whom reports were made never took any steps. Otherwise the evidence of the two witnesses stands un controverted. There was no reason for them to frame the appellant. There was no allegation of a grudge or bad blood between the plaintiffs on one head and the appellant on the other. They are people who knew each other well. The defence did not dispute that evidence. It is in the defence that the appellant claimed they had quarrelled with Mwola PW2 but he never gave the nature or details of the brawl nor was it raised in cross examination of PW2 so that PW2 could have responded to it.

The evidence before court was from two witnesses who were lone witnesses to the different incidents. There are many incidents where only one person is the witness and there is no law that the court can not rely on testimony on one witnesses provided that the court is satisfied that the witness is truthful. There is no need for corroboration in such a case.

Though the appellant alleges hearsay evidence, there was none alluded to. PW1 & 2 were alone when accosted. That is what they told the court.

The fact that the OB was not produced in evidence does not mean the evidence of the prosecution was contradictory. The question is whether the prosecution adduced sufficient evidence that proved the case beyond any reasonable doubt. The Magistrate weighed the evidence of the only witness to the alleged offences, the complaint and the appellant and came to the conclusion that the complaints were truthful. I have no reason to interfere with his finding. After all the magistrate had chance to see both complaints and appellant and weighed the demeanour.

All in all, I do find that failure to adduce police evidence did not weaken the evidence of the prosecution. After all the policemen would have told court what they were told. The conviction is safe and will stand.

The appellant was sentenced to 3 years imprisonment on each count and sentences were to run concurrently. The maximum sentence under section 302 penal code is 10 years. The lower court called for a Probation Officer's.report for the appellant. Though the magistrate did not indicate what the findings of the probation officer were it is apparent it was not suitable and preferred the custodial sentence.

The sentence is fair in the circumstance and the court finds no reason to interfere. Appeal against conviction and sentence is dismissed.

Dated, read and delivered at Machakos …….this day

of……..,2004.

R. WENDOH

JUDGE