

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL APPEAL NO.383 OF 2000

**(From original conviction and sentence in Criminal
Case No.1014/98 of the Senior Principal Magistrate's
Court at NAIVASHA – I. GITARI(S.R.M.)**

JOHN NJUGUNA KIARIE.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

The Appellant JOHN NJUGUNA KIARIE has appealed against the conviction and sentence by the Naivasha SPM's Court. He had been charged with ATTEMPTED ROBBERY contrary to Section 279(I) of the Penal Code tried and sentenced to five(5) years imprisonment and 5 strokes of the cane upon conviction.

The brief facts of the case were that the Complainant, a Police Officer and PW2, his colleague dropped off at Naivasha fly over at midnight of the night in question. They were coming from Nakuru. As they crossed the road they noticed that there were four men ahead of them and four behind them. That one of those in front of them, who was armed with an iron bar ordered them to surrender and give everything they had. He also flashed a torch at them. He was identified as the Appellant.

That the others were also closing in on them and sensing danger the Complainant fired two shots in the air and PW2 fired one shot. That sent all the others running except the Appellant who knelt down and pleaded to be arrested and which they did. The Appellant was charged with this offence.

The Appellant said he was an innocent man going home at 8 p.m. on material day when he was arrested. He urges the court to find that the Complainant and his companion were malicious. The State Counsel has opposed the appeal and has submitted that the Appellant was arrested as he attempted to rob the Complainant in a group of gangsters who were armed. That when the Complainant and his colleague fired in the air, all fled except the Appellant who knelt down and was arrested.

I do find that there was overwhelming evidence against the Appellant. He was arrested on the spot attempting to rob the Complainant who was an armed Police Officer. The Complainant was accompanied by PW2 also an armed Police Officer. When the two fired the, Appellant knelt down pleading for arrest. His companions fled. There is no chance that the Appellant has been mistaken for another. He was identified as the one who demanded that the Complainant and PW2 surrender and give all they had. The prosecution has proved that the Appellant's intention was to rob the Complainant.

The Appellant's claims that the Complainant and his colleague were malicious. I find no evidence to suggest malice. They did not know the Appellant before and the Appellant admits this in his defence.

I am satisfied that the trial court analysed entire evidence before her and came to the rightful conclusion.

On sentence of five years imprisonment and five strokes of the cane the Appellant has urged the court to consider that he was in custody for one year pending hearing and determination of the case before he was sentenced.

Putting that into consideration the Appellant has been in custody sine July, 1998, which is a period of

over 4 years.

I find that the period he has served suffices for the offence for which he was charged. I will dismiss the appeal against conviction and allow that against sentence to the period already served.

Orders accordingly.

Dated and delivered at Nakuru this 18th day of March, 2003.

JESSIE LESIIT

JUDGE