

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAIROBI

CRIMINAL APPEAL NO. 1404 OF 2000

PATRICK KIMATHI NGORE APPELLANT

VERSUS

REPUBLIC RESPONDENT

JUDGEMENT

The appellant was convicted of (1) Robbery with violence contrary to section 296(1) of the penal code and (2) being in possession of Government stores contrary to section 324(2) of the Penal Code.

On the count of robbery the appellant was sentenced to serve four (4) years imprisonment and was ordered to receive 4 strokes of the cane. He was also ordered to be under police supervision for 5 years.

On the count of being in possession of Government stores the appellant was sentenced to serve 2 years imprisonment. The sentences were to run concurrently. The facts as found by the learned trial magistrate can be briefly stated. On 16th December 1999, the complainant Joshua Gitonga took Kshs.46,000/= from his wholesale shop in River road Nairobi and proceeded to a shop known as Tobacco Wholesalers to buy some cigarettes for resale.

The complainant had kept the money in his coat pocket. On the way he was confronted by 4 strange men. The 4 men said that they had been looking for the complainant for a long time. They passed as police officers. They were in a motor vehicle registration number KAJ 014C a Peugeot 505. They branded the complainant a thief. They beat him up and placed him inside the said motor vehicle informing him that he was being taken to a police station.

They proceeded along Juja Road up to Kangundo Road where they abandoned the complainant. They took away his money and a wrist watch. They beat him hard injuring him on his back. The complainant reported the matter to Kamukunji Police Station. The Police commenced investigation. On 19th January, 2000, the appellant and two others were arrested along Nkurumah Lane in a car Registration Number KAA 555Q. The car had earlier been reported to have been used in various robberies. The appellant and the two others were charged and the appellant was dealt with as earlier stated at the beginning of this judgement. When placed in his defence the appellant denied that he had committed the offences he was charged with. He told the trial court that on 19th January, 2000 he had been to Machakos. He came back to Nairobi at 5. 00 P. M. He was using his motor vehicle Registration Number KAA 555Q. It is then that he was arrested by Police officers and charged. The learned trial Magistrate found as a fact and rightly so that the complainant had been robbed of his money on 16th day of December, 1999. The question was whether the people accused before her including the appellant were among the four men who robbed the complainant. There appear to be two issues against the appellant.

The first issue is that of identification. The complainant was able to pick the appellant in an identification parade. This was three weeks after the robbery. The appellant challenged the identification parade during the hearing of the appeal. There are no legal grounds to fault the identification parade. It was properly done. But it was done three weeks after the robbery. This is not a very short time nor is it a very long time after the event. But any doubt that could have been created by the said duration of three weeks is removed by the second issue. The second issue involves motor vehicle Registration Number KAJ 014C. There is acceptable evidence which was accepted by the learned trial magistrate to the effect that motor vehicle Registration Number KAJ 014C a Peugeot 505 had been hired by the appellant from P. W. 2 and was

with the appellant at the time the robbery was committed. The appellant told this court on appeal that P. W. 2 told lies against him because he was owned some money by the appellant. This court like the trial court does not see any substance in that allegation.

Apart from his oral submissions, the appellant relied on written submission. The criminal procedure code does not provide for written submissions. All the same I have considered the said written submissions. I have carefully evaluated the record on my own. I am satisfied that the conviction of the appellant on the count of robbery was safe. However, it can't be said for certain that the appellant was in possession of the handcuffs. There is no direct evidence to show that he knew that his companions had the handcuffs. I agree with the learned state counsel Mr. Karuri that he should have been given the benefit of doubt. There were ingredients to support a charge under section 296(2) of the Penal Code. The appellant was lucky to have escaped with a sentence of 4 years and 4 strokes of the cane.

Appeal against conviction for robbery is refused and dismissed. The sentence passed by the learned magistrate stands.

Appeal against conviction for being in possession of Government stores succeeds. It is allowed. The conviction is quashed and the sentence set aside.

The appellant will however serve the 4 years in prison and receive 4 strokes of the cane. He will be subject to police supervision as ordered by the trial court.

Orders accordingly.

Dated and delivered at Nairobi this 24th day of January, 2002.

D. M. RIMITA
JUDGE