



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL DIVISION
CRIMINAL APPEAL NO.843 OF 1999

**(From Original Conviction and Sentence in Criminal Case
No.1893 of 1998 of the Chief Magistrate's Court at Nairobi).**

GEORGE GIKONYO NGANGA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

The appellant was charged for Robbery with Violence, contrary to section 296(d), P.C. with an alternative count of handling stolen property, contrary to section 322(2), P.C.

The evidence established that the complainant (PW.1) was robbed of her motor vehicle, Reg. No.KAE 501N, Nissan Sunny, a wrist watch make Seiko and Cash Sh.1,200/= on 1st August, 1998 by three people who got into her said vehicle during day time when she stopped to remove something from her boat on Ruaka road, Nairobi at about 12.30 – 12.45 p.m. The thugs got into the said vehicle pointing a gun at her, taking the car's keys and putting her in the back seat. They then drove the car towards Limuru Road. Later she was dropped and the robbers drove away the vehicle. She reported to the police.

It was not in dispute that on 5th August, 1998 the appellant was arrested by the police in possession of the motor vehicle with a false registration number plate, i.e. Reg. No.KAJ 107W fixed on it. His defence was that the motor vehicle was given to him by his friend, Mr. Wambugu.

According to the investigating officer, Police Corporal Jonathan, P.W.3, he arrested Wambugu but he denied giving the motor vehicle to the appellant.

The appellant further stated he was not properly identified by the complainant. He added that the parade officer (P.W.5, I/P Mutua) had assisted her (complainant to identify him by pointing at him at the parade.

The complainant's testimony, inter alia, was that the robbers stayed with her for about 45 minutes to one hour. It was a broad day light and she was able to see the appellant who was one of the three robbers. According to her the appellant had a gun and he sat with her in the back seat. At one stage she opened her bag upon asking and the appellant went through it. She maintained that she saw appellant properly at the time and later identified him at the parade. She denied that the parade officer had assisted her to identify him at the parade.

The learned lady Magistrate Mrs. M.W. Murage considered the entire evidence before her with care required and accepted that of the prosecution as true and rejected the defence giving her reasons. With respect, we agree.

Considering the evidence as a whole we find no merits in any of the grounds raised on the appeal. The robbery was during day time. Although at one time the complainant had closed her eyes upon asking, she had, the evidence shows, opened them up later. She was showed the contents in her bag to the appellant who went through them. The circumstances for identification were very favourable. The fact that the complainant had asked the appellant to turn back and also to speak does not mean that she picked up the appellant wrongly. The complainant did so to be extra sure to convince herself and others that she had made no mistake.

The additional further evidence against the appellant was that in about four days after the robbery he was found in possession of the motor vehicle the complainant was robbed of with a fake number plate on it. His explanation that it was given to him by one Wambugu was rightly rejected by the Magistrate saying that the appellant had not given a satisfactory explanation for the said possession.

We now turn to consider whether this is a suitable case for the substitution of the conviction for Robbery, contrary to section 296(1), P.C.

We note that the complainant was not injured during the course of the robbery. Further the motor vehicle was soon recovered and, as the charge sheet shows, the appellant was given an option to plead guilty to the alternative count of handling. We consider this to be a suitable case for the substitution of the conviction for contrary to section 296(1), P.C. The appellant had no previous conviction. He was in remand for one year. There is no remission for robbery sentence.

We substitute the conviction for Robbery, contrary to section 296(1), P.C. and set aside the death sentence. We sentence the appellant to 4 ½ years imprisonment with effect from 6-8-1999 plus three strokes.

Dated and delivered at Nairobi this 20th February, 2002.

V.V. PATEL

JUDGE