

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL APPEAL NO. 916 OF 1999

**FROM ORIGINAL CONVICTION AND SENTENCE IN CRIMINAL
CASE NO. 2505 OF 1999 OF THE PRINCIPAL MAGISTRATE'S
COURT AT MACHAKOS**

ISAAC GITAU GOKU.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

These appeals are consolidated. All the four appellants were charged with two counts of Robbery with violence C/s 296(2) of the Penal Code. In Count one, it was alleged that on 31st July, 1999 along Katani/Syokimau road, Katani Location in Machakos, being armed with dangerous weapons namely iron bars, simis and a toy pistol, they jointly robbed Jimmy Muthiani Nyamu of his motor vehicle Registration no. KAE 366H Toyota Corolla a jacket, citizen wrist watch, a pair of black shoes, a wedding ring, a car remote control device and cash Kshs. 3,050/- all valued at kshs. 403,050 and that at or immediately before or after the time of such robbery, they used actual violence to the said Jimmy Nyumu.

In count two, the same appellants were said to have robbed Maingi ndatu of an oris wrist watch valued at Kshs. 800 and cash Kshs. 2,240/- and in so doing used personal violence on him. They denied the charges.

After a full trial however, all the appellants were found guilty of both counts, convicted and sentenced to death. Being aggrieved by the said convictions they appealed.

The evidence was brief and to the point. Both complainants were traveling along Katani/Syokimau road on 31st July 1999 aforesaid. They were in motor vehicle registration number KAE 366H make Toyota corolla owned by the first complainant Jimmy Muthiani Nyumu. Time was 11.00am. Along the said road, they saw four people standing by the roadside. Suddenly, one of the four men jumped onto the road and pointed what appeared to be a pistol at the driver, Jimmy. He threatened to shoot if Jimmy did not heed his order to stop. He stopped and the other three surrounded the car ordering the two occupants to open the doors. They complied.

One of the attackers took the steering wheel after jimmy and his passenger were ordered to the rear seat. One of these people took the front passenger seat while the remaining two sandwiched Jimmy and his passenger in the rear seat. The two complainants were then robbed of the property set out in the charge sheet. The car was driven for some distance after which the complainants were abandoned. Police officers driving along the same road on patrol noticed the stolen motor vehicle being driven at high speed. The occupants looked suspicious. The police gave chase and some point the car was stopped and occupants started running away. The police fired several shots. Two of the suspects were arrested near the scene but not before one of them threw away what turned out to be the toy pistol. The other two suspects ran into the National Park but with the support of Kenya wildlife Service personnel they were arrested. The

complainants identified all the four suspects as the people who had earlier robbed them of the car and other personal effects. These charges were then preferred against them.

In their respective defences, the appellants denied the offences. In convicting the appellants, the learned trial magistrate said:

“Both Jimmy and Ndotu gave graphic details of the whole incident. They were robbed of their car by four men. Each of the four had a weapon. One of them threatened them with a toy pistol... In my view, although Jimmy and Ndotu were not injured, these people instilled fear in them. I hold that all the ingredients of robbery have been proved..... The incident took place at about 11.00am It was during the day. So jimmy and Ndotu saw these people well. In fact, they described very confidently what each of the accused person had wore and did on that day. I note that after their arrest, the police did not conduct an identification parade. But I find the circumstances of the arrest of the accused very obvious. The police officers saw suspicious people and gave a chase. The four accused were in the car and it was moments after they had taken it from their victims. The three officers saw the four accused very well. They did not lose sight of the car nor did they loose sight of the four accused persons even after they (accused) left the car. Indeed, accused 1 threw down the toy pistol Jimmy had clearly seen accused 1 with the toy pistol. I can only say that this is a clear case of being caught “red handed”.....I do find the evidence quite clear and overwhelming.”

On our part, we have made an independent evaluation of the evidence on record. As correctly observed by the learned trial magistrate, the incident took place during broad daylight. The victims and their attackers sat in the same car for some time before they (the complainants) were abandoned. The faces of the assailants were not covered or disguised in any way.

The police officers on the other hand did not loose sight of the suspects from the time they spotted them in the car to the time of their arrest. This was not a case of mistaken identity.

It is true that none of the two complainants was injured but the ingredients of the offence of robbery with violence *c/s* 296(2) of the penal Code had been proved. The defences advance by the appellants respectively could not withstand the overwhelming evidence presented by the prosecutions.

We see no merit in three appeals which are dismissed accordingly. R/A explained.

Dated and delivered at Nairobi this 2nd day of October, 2002.

A. MBOGHOLI MSAGHA

JUDGE

G. MBITO

JUDGE