

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (MILIMANI LAW COURTS)

CIRMINAL APPEAL NO. 1213 OF 1999

OBEL OCHIENG.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

This appeal arises from the conviction of the appellant herein of the offence of robbery with violence c/s 296(2) of the penal code.

The robbery involved a bread delivery van with two occupants, the driver and a salesman. On 6th October, 1998 near Prison training College, Ruiru, in Thika District, a man holding an empty crate of bread stopped the said van intending to buy some bread. When the driver stopped the motor vehicle, the salesman alighted and went to the rear to sell the bread. When he asked for money, the man produced a pistol and instead demanded money from the salesman. Two other people emerged. The salesman ran away screaming which action attracted members of the public.

There was evidence that members of public gave chase and killed two of the suspects while one, the appellant herein, ran into a house and hid therein until he was arrested. When the salesman ran away screaming, two of the suspects attempted to steal the van but failed. However, in the process, KShs. 4,497/50 was stolen from the driver's cabin. The appellant was subsequently charged with robbery aforesaid.

In his defence, the appellant said that, on the said date he met three people along the way who stopped him and said he was the one who had attacked them. They attacked him and ran away.

In his petition of appeal he challenged the conviction on the grounds that, conditions for positive identification were lacking and that the exhibits recovered were not found in his possession.

We have considered the entire record before us. The offence was committed during broad day light, at about noon. The encounter was sudden but the salesman was emphatic that the appellant was one of the robbers. When members of public gave chase, the appellant was among those who were being pursued. There is evidence that he ran into a private residence and locked himself in one of the rooms. That is not the conduct of an innocent person.

From the circumstances prevailing, the three people who included the appellant had a common intention to rob and did rob the complainant. A weapon was used albeit to threaten the salesman. The offence was proved beyond reasonable doubt. This appeal must fail.

Accordingly the appeal is dismissed. Order accordingly.

Right of appeal explained.

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

MBOGHOLI MSAGHA

JUDGE

G. MBITO

JUDGE