

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL APPEAL NO. 431 OF 20001

BONIFACE WAGURA WANGOI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The appellant was convicted of the offence of attempted robbery and sentenced to death. According to the offence adduced by the prosecution witness, the complainant was on his way home when he saw two people running from behind. The two people caught him from behind and thereforein front of him held a knife and threatened to kill him. The complainant screamed due to shock and some people arrived with dogs and the person holding the knife was caught. It was his evidence that the place was well lit with electricity light and the person who held him from behind was strangling him.

On the arrival of the people who rescued him the person who was holding a knife threw it away. The police were informed and re arrested the appellant. Theofficer learnt that the appellant had a knife but had thrown it away.

In his defence the appellant said that he was coming from his brother's house and when he was arrested he was taken to a house of Pw1 and asked if he knew the suspects who tried to rob the complainant of his money. He denied any action with the offence and nothing was recovered from him.

In convicting the appellant, the learned trial Magistrate had the following to say

“Having gone through the evidence on record in this matter, both by the prosecutions and the defence, I do find that the accused was caught while having held on Pw1 and with a knife threatened to kill him. They had not stolen from him but had pw2 and the colleague who had dogs not arrived I am sure the accused would have robbed him. I do find that he attempted to rob pw1 while in the c ompany of another. I find him guilty as charged and I convict him accordingly.

MISS. MWANGI

PRINCIPAL MAGISTRATE

In one paragraph the learned trial magistrate convicted the appellant and sentenced him to death. In that analysis if the same were so the learned trial magistrate did not address a very serious omission that no attempt whatsoever was made to recover the knife which was allegedly thrown away by the appellant. There was also evidence that another person was present but the charge was silent as to this particular person and the magistrate also never addressed this particular issue. The offence is serious as it carries a mandatory death sentence and it was necessary for the learned trial magistrate to be satisfied beyond reasonable doubt before she could convict the appellant of the offence. Further to the foregoing the court invoked his information in the paragraph that we have set out herein before. There was with respect a reasonable doubt which ought to have been accorded to the appellant and we find that the conviction was most unsafe.

Accordingly we allow the appeal, quash the conviction and set aside the sentence. The appellant shall

be set free forthwith unless otherwise lawfully held.

Dated and delivered at Nairobi this 14th day of November, 2002.

MBOGHOLI MSAGHA

JUDGE