

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA

APPELLATE SIDE

CRIMINAL APPEAL NO.465 OF 2000

JUMA BAKARI APPELLANT

- VERSUS -

REPUBLIC RESPONDENT

(From Original Conviction and Sentence in Criminal Case No. 1495 of 2000

of the Chief Magistrate's Court at Mombasa – G. Katasi – R.M.)

J U D G E M E N T

The appellant was charged and convicted for the offence of Robbery with violence contrary to Section 296 (1) of the Penal Code and sentenced to serve 7 years imprisonment, and 7 strokes of the cane. He has preferred an appeal against both Conviction and Sentence and has cited 5 grounds of appeal which he combined in his Submissions.

The brief facts are that on 28th April, 2002 PW2, PW3 and PW4 were transporting shop goods loaded onto bicycles to their destinations on behalf of their employer PW1, when they were attacked by a group of people and a bag of sugar stolen. From the evidence there is some discrepancy as to how many the attackers were but there is no doubt that a chase ensued and one of them, the appellant was cornered when he entered the Kenya Navy Compound. The bag of sugar was later recovered in a building under construction as members of the public had seen some of the Robbers including the appellant go to that direction. The appellant was arrested by the Navy Officers and handed over to PW7. He was identified by PW4 as one of the persons he saw jumping out of the house still under construction and he was chased upto the Kenya Navy compound. The appellant challenged his arrest saying the prosecution should have called the Navy officer who arrested him initially. He also said he was arrested for trespassing into the Navy compound and he had heard and seen people chasing after a thief. He gave an unsworn evidence.

The State Counsel did not support the Conviction and Sentence and rightly so on the ground that the charge was defective. The appellant was charged with Robbery Contrary to Section 296 (1) but the evidence adduced pointed to offence under Section 296(2) and so were the particulars. The Court did not give reasons for having ignored the discrepancy. The appellant therefore did not have an opportunity to prepare his defence for a more serious charge.

I have considered the evidence or record and find that the appellant no doubt was arrested soon after the commission of the offence and was identified by PW2, 3 and 4 as one of the Robbers. He was trailed all the way upto his arrest. I also agree it would not be fair to convict him on a charge to which he had no chance to defend himself and yet is very serious. He has already been in prison for a period of over 2 years. Taking all the factors into account, the conviction is quashed on those technicalities as pointed out and Sentence is set aside.

Dated at Mombasa this day of November, 2002.

P.M. TUTUI

COMMISSIONER OF ASSIZE

