



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI  
CRIMINAL APPEAL NO. 396 OF 1998

JAMES LESIKA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The appellant James Lesakat was convicted of the offence of robbery with violence c/s 296(2) of the Penal Code and sentenced to death. This is an appeal against the said conviction and sentence.

As the first appellate court, it is our duty to go over the evidence adduced in the lower court, evaluate the same and arrive at independent conclusions. This we have done.

The premises of Glenn Mathews were raided on the night of 6th May, 1997 and goods worth Kshs. 925000/- stolen. In the course of the robbery, one Jackson Okulu who was the night watchman was wounded.

Okulu who was pw1 in the lower court saw three men whom he had not seen before behind a store where he had gone to check what was happening after hearing a cat make noise. The time was 1.00am. These people ordered him to lie down and using his scuff blind folded him. These people were armed with a Somali sword at about 3.00am on the same night, pw1 was taken to the garage where he heard them say he should be killed to avoid identification on the following day. He (pw1) then heard somebody order him to lie down and he identified the voice to be of the appellant James. He (Pw1) removed the scuff from his face and saw James who cut him with a panga. He was cut severally.

James, the appellant, was also employed in the same premises as a day guard and on that night he was with another night guard who was not however, on duty. They were all housed within the premises.

Pw1 was left for the dead but police were called and was taken to hospital. When he was being taken to hospital, his fellow guard and the appellant had disappeared. He added that there was bright moonlight and he saw them clearly as they were just near him. He had worked with the appellant for one and a half years.

Pw Glenn Mathews confirmed the robbery and loss of goods mentioned in the charge sheet. He also confirmed that he appellant and the other guard lived in the compound but that when their house was checked it was empty. With the aid of another watchman, the appellant was arrested and brought back with a calculator which pw2 identified belonged to the secretary of the company and bore her name.

Pw3 identified the same calculator which was missing he following morning after the robbery.

Zakayo Kwendo(Pw4) is a gardener employed by Pw2. On that night he was woken up by screams of

Jackson Okulu(pw1). He summoned security personnel who assisted in taking the injured guard to hospital. The other guard who was to work with Jackson that night and the appellant were nowhere to be seen. Their houses were also empty and doors open.

Pw5 P.C. Hezron Indangazi was one of the first police officers to visit the scene. He also took part in the investigations that led to the arrest of the appellant at the Industrial Area. On arrest, the appellant was searched and the calculator said to have been among the stolen goods, found in his left jacket pocket. The appellant was found walking along Enterprise Road. He added that when he visited the scene at between 3.00 and 4.00a.m the appellant was not there.

Dr Zephania Kamau examined Jackson Okullo who had multiple scars. He confirmed he had sustained grievous harm.

In his defence by way of an unsworn statement, the appellant said he reported on duty where he used to work as a watchman on 6th May, 1997. he found the gardener and other employees who asked him the whereabouts of the other watchmen but he did not know.

It was then alleged that he knew the robbers. Jackson is the one who is alleged to have said so. He had a grudge against him. The appellant then added that Jackson told him he had been dismissed but he refused to leave until he was paid for he period he had worked. Police were called who came and arrested him. He was subsequently charged with the offence he knew nothing about.

It is true that the offence was committed at night. Except for the moonlight, pw1 did not say he was aided by any other source of light. He had worked with the appellant for over a year and we have no doubt that he knew his voice. Indeed, what prompted him to pull down the scuff that had been used to blindfold him was the voice of the appellant that he identified. The assailants were also said to be very close and so pw1 was able to see the appellant and the other night guard clearly.

The appellant also collected all his personal effects from the house in which he lived. He was also arrested with a calculator which was positively identified as among the things stolen from the said premises.

It may well be said that pw1 was a sole identifying witness but the conduct of the appellant in leaving the premises soon after the robbery, his carrying away all his belongings and his being found with the calculator solidifies the assertion by pw1 that the appellant was one of the robbers and who actually cut him with a panga.

The defence advanced by the appellant is not plausible at all. It cannot withstand the weight of the prosecution witnesses. It is not true that he stays in some village in Langata. Evidence led by the prosecution established he lived in the compound of the complainant.

Even when he said that it is Jackson who addressed him when he reached the premises, it did not occur to him that Jackson was in hospital fighting for his life after the brutal attack. The evidence of the arresting officer was not shaken under cross-examination and we are satisfied that the appellant was arrested at the Industrial area and not as he says, at his place of work.

The injuries were serious, committed in the course of the robbery and in line with the ingredients of section 296(2) of the Penal Code.

The appellant in this appeal has introduced another dimension. He alleged that he did not understand the language of the court. We wish to observe that from the first day when the charge was put to the accused, the record shows there was interpretation from English to Kiswahili. Pw1 pw3, pw4 pw5 testified in Kiswahili. Pw2 and pw6 testified in English but there was interpretation into Kiswahili.

The record also shows that the appellant fully participated in the trial by cross-examining the witness. Nowhere in the proceedings did he allege that he did not understand the same. This belated move cannot

sway our minds.

On our part, we are satisfied that the offence of robbery with violence was proved against the appellant beyond any reasonable doubt. The conviction was well founded. There is only one sentence for such an offence and no law mandates us to interfere with the same.

This appeal is accordingly dismissed.

Order accordingly.

Right of appeal explained.

Dated and delivered at Nairobi this 24th day of July, 2001.

MBOGHOLI MSAGHA

JUDGE

A ETYANG

JUDGE