



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**APPELLATE SIDE**  
**CRIMINAL APPEAL NO.547 OF 2000**  
**(Being an appeal from Original Conviction and Sentence in Criminal Case  
No.539 of 2000 of the Chief Magistrate's Court at Mombasa – B. Maloba,  
SRM)**

**WILLIAM DUBI IKIWO ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

**J U D G M E N T**

The Appellant was charged with two offences under Section 105 (b) of the Penal Code. That section reads:

“Any person who- (b) falsely represents himself to be a person employed in the public service, and assumes to do any act or to attend in any place for the purpose of doing any act by virtue of such employed ----- Ö

In the charge sheet the appellant is charged with –

“Personating a police officer contrary to Section 105(b) of the Penal Code”

Appellant’s Counsel submits that the charge as drawn is fatally flawed and the appeal should succeed. He points out that there is no charge of “personating a police officer” I note that the offence as charged does not exist. There has been no amendment to the charge. I find that the appellant was tried under non existent offence and for the two charges, count 1 and count 3 discharge him. The conviction is set aside and sentence for 3 years jail is set aside.

However the appellant is also charged under Section 302 of the Penal Code, demanding property with menaces on two counts. The maximum sentence is (10) ten years for this offence. The two charges are correctly written in the charge sheet as read to the appellant. On Count No.2 the evidence of PW.1 shows that the appellant approached him and requested him to go to the Provincial Police Headquarters and at the parking ground Appellant demanded payment of Shs.50,000/- or else he would put the witness into cells.

On Count 4 evidence of PW.2, the complainant, shows that the Appellant visited his office and demanded payment of Shjs.50,000/- failing which he would send investigation officers to the complaints office. This the complainant feared.

In the two instances the appellant used threatening words and his conduct was menacing. I am therefore

satisfied that the appellant committed the offences charged as in count 2 and counts 4. The evidence of the prosecution was not challenged on appeal. Indeed the counsel dwelt wholly on the charge of personating.

The State Counsel has stated that he does not support the conviction and sentence and that he prefers a retrial on the ground that the learned Magistrate does not comply with the requirements set out under Section 169(2) of Criminal Procedure Code. The section provides:

“In the case of a conviction the judgment shall specify the offence of which and the section the Penal Code or other law under which, the accused person is convicted, and the punishment under which he is sentenced”

In the present case the judgment specifies the punishment for each count namely 2 offences of personating a police officer contrary to Section 105 (b) of Penal Code and demanding property under Section 302 Penal Code.

Section 169(2) requires the offence to be specified and the Section of Penal Code under which the accused person is convicted to be stated. This the Trial Magistrate has done and in my view the judgment is quite clear. I do not agree that it is necessary to have a retrial in this case. I find that the offences under Count 1 (one) and (3) three were defective and brought under a defective charge. The two convictions are quashed and sentences are set aside.

However the offences under counts 2 and count 4 are clearly mentioned to have been brought under Section 302 Penal Code. I do not see any defect either in the charge sheet or judgment. No arguments were offered on these counts. I find these counts to be separate and independent of those under Section 105(b) Penal Code.

I am satisfied that these offences were proved beyond reasonable doubt and I do not see any reason for interfering with conviction or sentence. The sentence for 3 years on each count cannot be said to be excessive the maximum sentence being 10 years. The result is that the appeal is successful in count 1 and 3. However the offences under count 2 and 4 were properly proved and the convictions and sentences are upheld. The appeal fails to that extent.

**Dated at Mombasa this 28th Day of August 2001.**

**J. KHAMINWA**

**COMMISSIONER OF ASSIZE**