

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

APPELLATE SIDE

CRIMINAL APPEAL NO.128 OF 2000

JAMES MWANGI NJUGUNA.....APPELLANT

versus

REPUBLIC.....RESPONDEN

J U D G M E N T

On the 1st count the appellant was convicted of attempted robbery, contrary to section 297(2), P.C. and sentenced to death.

On the 2nd count the conviction was for unlawfully possessing a fire arm, contrary to section 4(2) of the Firearm Act, and he was sentenced to four years imprisonment.

The appellant now accepts both the convictions as proper saying he admits he committed the said offences.

However, he requests that the conviction on the 1st count be substituted for attempted robbery, contrary to section 297(1), P.C. and the death sentence be set aside.

The evidence was that the appellant jointly with the others went to the complainant's Bar along Tom Mboya Street on 2/7/99 at about 2 p.m. and attempted to rob the complainant. The appellant was armed with a revolver at the time and he pointed it at the complainant but the complainant Managed to pounce on the appellant, struggled with him and held him together with the revolver. One of the two cronies of the appellant had also a pistol and the complainant's friend (P.W.2) struggled with the said robber but that one with the 3rd one managed to run away.

P.W.2 assisted the complainant in locking up the appellant with the revolver. The Police came and picked up the appellant and took possession of the Revolver (Ex.1).

I have considered the recorded evidence together with the appellant's request for the substitution. The complainant and P.W.2 received only minor injuries classified as harm during the course of the attempted robbery.

In my considered view the Police should have brought the charge in this case contrary to section 297(1), P.C. rather than 297(2). The learned lady State Counsel Miss Wanyama has no serious objection to the substitution asked for either.

Order:

On Count No.1: I substitution the conviction for simple attempted robbery, contrary to section 297(1), P.C. and set aside the death sentence. I sentence the appellant to 5 years imprisonment with effect from 4th February, 2000 together with three strokes. The sentence of Four years imprisonment on the 2nd count stands. The prison sentences on the two counts to run concurrently.

V.V. PATEL

JUDGE

22/6/2000