



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

CRIMINAL APPEAL NO. 52 OF 2018

(CORAM: R. E. ABURILI – J.)

ISAAC OUMA AKUMUAPPELLANT

VERSUS

REPUBLICRESPONDENT

(Being an Appeal against sentence and conviction dated 18.9.2018 in Criminal Case No. 107 of 2018 in Bondo Law Court before Hon. M.Obiero – P M).

JUDGMENT:

1. The three appellants in these consolidated appeals **Nos. 51 of 2018, 52 of 2018 and 53 of 2018** are **Mark Ondele Olenyo, Isaac Ouma Akumu and Samson Abor Olenyo**. They were jointly charged with the offence of **Robbery with violence Contrary to Section 296 (2) of the Penal Code**. They were tried found guilty and sentenced to serve 30 years each in prison. In total, 120 years imprisonment on 18.9.2018. The trial Court is the P.M's Court at Bondo vide Criminal Case No. 107 of 2018.
2. Dissatisfied with the conviction and sentence imposed on them, the appellants filed their separate appeals as stated above, which appeals were consolidated on 23.1.2019 and the lead file is HCRA 51 of 2018.
3. The appeals as filed by the respective appellants are essentially the same in terms of their grounds of appeal as filed on 21.9.2018 within 14 days of the date of judgment delivered on 18.9.2018.
4. The appellants' grounds of appeal which are also framed as courteous address to the court are:
 - (1) *That I pleaded not guilty to the charge.*
 - (2) *That no recovery was done hence no exhibit was produced before the Court and further proof that none of the accused were in possession of any alleged stolen items,*
 - (3) *That the 1st, 2nd and 3rd accused were arrested when 'we' went to report the matter to police this leaves a lot to be desired as to why robbers can report to police after committing such a crime.*
 - (4) *That witness testified that it was disagreement within the church as the splinter group came to destroy the late Bishops Mausoleum and the alleged accused came to the rescue no robbery took place.*
 - (5) *That I plead for original court proceedings to enable me adduce more grounds.*
5. And finally that may this appeal succeed, the conviction quashed Sentence set aside and be set at liberty.
6. The appellants, filed their appeals prose before engaging services of legal counsel on record, Mr. Kowino and Mr. Abidha to represent them in the appeal.
7. The advocates filed written submissions on 5.3.2019.
8. The Prosecution did not file any submissions but were ready to argue the appeals orally.
9. Mr. Kowino Advocate made oral submissions giving the history of the matter giving rise to the charges of robbery with violence against

the appellants and before he could conclude.

10. Mr. Okachi, Counsel for the State addressed the Court intimating that he concedes the appeals for reasons that there was an error on the face of the record and that the trial Court did not take cognizance of as the offence took place in broad daylight on a Saturday. That the appellants should have been charged with the offence of assault or creating disturbance.

Counsel conceded the appeal in its entirety.

11. I have considered the trial record proceedings, evidence for the prosecution and for the defence and the concession by Mr. Okachi prosecuting Counsel.

12. It is not in dispute that the offences with which the appellants were charged arose as a result of a church dispute pitying two factious who attacked each other, fought and in the process, some church members were injured while others lost their items subject of the charges.

13. Where law and order breaks, no doubt chaos reign and hence the charges that faced the appellants.

14. In such circumstances, as to whether the offence committed was Robbery with violence is highly doubtful and in my humble view, the appellants ought not to have gone through a trial for capital offences, considering circumstances of the case. There is every indication that the church members fought over the mausoleum of its founder, with one faction trying to protect it while the other faction was trying to carry out rites which were unacceptable to the other faction.

15. That in my humble view cannot amount to robbery with violence although it is possible that in the process, some people may have taken advantage of the chaotic situation and helped themselves with items of church congregation.

16. For the reasons that the offence charged was not proved to the standard required by law, beyond reasonable doubt, and as the chaos leading to the charges arose as a consequence of two church factions fighting each other, I find and hold that the conviction of the appellants for robbery with violence was grossly unsafe.

17. The same is hereby quashed. Consequently, the 30 years imprisonment sentences meted out on each of the 3 appellants in respect of the several counts of Robbery with violence must be set aside. The same is hereby set aside. The entire appeal as consolidated is hereby allowed.

18. The appellants Mark Ondele Olenyo, Isaac Ouma Akumu and Samson Abor Olenyo are hereby set at liberty unless otherwise lawfully held.

19. As members of a church, they are called upon to embrace peace and unity as the Court would not hesitate convict persons who are found guilty of breaking the law. Orders accordingly.

DATED, SIGNED AND DELIVERED AT SIAYA THIS 11TH DAY OF MARCH, 2019.

R.E. ABURILI

JUDGE