



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MURANG'A**

**CRIMINAL APPEAL NO 204 OF 2013**

**(Appeal against conviction and sentence in Murang'a Criminal Case No 2686 of 2010 – A. K. Kaniaru, SPM)**

**SILAS WACHIRA NJOROGE.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

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

1. The Appellant herein, *Silas Wachira Njoro*, was convicted after trial of *capital robbery* contrary to **section 296(2)** of the *Penal Code*. It was alleged in the particulars of the charge that on 18/12/2010 in Mirira sub-location, Murang'a North District within Murang'a County, jointly with others not before court, he robbed one **Joseph Githuku Irungu** money and listed items, all valued at KShs 6,000/00, and that immediately before the time of such robbery he wounded the said victim. On 30/04/2012 he was sentenced to death as provided by law. He has appealed against both conviction and sentence.

2. In his petition of appeal filed on 07/05/2012 the Appellant has complained that the prosecution case was never proved to the required standard; that the prosecution failed to provide an occurrence book that he had requested for; that vital witnesses were not called; and that the alibi he put forward was rejected by the trial court without good reason. In his amended grounds of appeal handed in at the hearing of the appeal the Appellant raised these further grounds –

(i) That the trial court applied the wrong standard of proof – on a balance of probabilities instead of beyond reasonable doubt.

(ii) That the charge was defective and did not meet the requirements of section 137 of the Criminal Procedure Code.

(iii) That the trial court did not sufficiently consider the evidence of identification of the Appellant.

(iv) That the trial court erred in not finding that the evidence adduced by the prosecution was inconsistent, contradictory and unreliable.

(v) That the trial court did not sufficiently consider the Appellant's sworn testimony in his own defence.

3. I have read and considered the Appellant's written submissions, also handed in at the hearing of the appeal,

4. Learned prosecution counsel supported the conviction and sentence. He submitted that the evidence placed before the trial court proved the charge beyond reasonable doubt and that all the elements of the offence were fully established in that something capable of being stolen was stolen from the complainant (PW1); that it was also proved that at the time of the robbery the Appellant was in the company of other persons; and that the complainant was wounded during the robbery and there was medical evidence of that fact.
5. As for identification, learned prosecution counsel submitted that the robbery took place in daylight at 4 p.m.; that the complainant knew the Appellant physically though not by name; that he gave a description of him to the police immediately after the attack; and that the complainant led the police to the Appellant. Learned counsel further submitted that in these circumstances there was no need for an identification parade to be conducted and that the Appellant's identification was safe.
6. Learned prosecution counsel also submitted that the record of the trial court did not bear out the Appellant's complaint that he requested for an Occurrence Book entry which was never produced; that the prosecution witnesses were not shaken in cross-examination; and that the trial court properly examined and assessed the testimonies of the witnesses, and that therefore its findings of fact should not be disturbed.
7. Regarding the Appellant's defence, learned prosecution counsel submitted that his sworn testimony was properly considered and the trial court noted that the Appellant stated that he knew the complainant, and that the complainant could not mistake him for anyone else.
8. As for the sentence, though the learned prosecution counsel supported it as a matter of law, he submitted that the only weapon used by the Appellant upon the complainant was a stick, and that therefore the court may consider reducing the charge to simple robbery.
9. I have read through the record of the trial court in order to evaluate the evidence and arrive at my own conclusions regarding the same. This is my duty as the first appellate court. I have borne in mind however that I neither saw nor heard the witnesses myself, and I have given due allowance for this fact.
10. The complainant was attacked in broad daylight at 4 p.m. in the afternoon. He knew the Appellant well, a fact that the Appellant himself admitted in his sworn testimony. The Appellant and the complainant exchanged words: the Appellant asked for some money which the complainant declined to give. The Appellant's two companions (whom the complainant did not know) then started beating him. The money he had and other possessions were then stolen from him.
11. The complainant's description of the Appellant (whose name he did not know) led to his arrest. He had seen him many times before and he led the police to him.
12. I am satisfied that the conditions prevailing during the robbery were such as afforded a good opportunity for the complainant to make a good and positive identification (by recognition) of the Appellant. He was properly and positively identified.
13. The complainant was beaten with a stick and wounded in the course of the robbery. Medical evidence of his injuries (Exhibit 1) was produced by PW4.)
14. The complainant (as well as his brother, PW2) described the money and items stolen from him. Although nothing was recovered, I am satisfied beyond reasonable doubt from the evidence on record that indeed the money and items listed in the charge were stolen from the complainant, and that in the course of the theft actual violence was used upon him to overcome resistance to the theft. The ingredients of robbery as defined in **section 295** of the Penal Code were therefore proved beyond reasonable doubt.
15. The complainant did not suffer grave injuries. Though the Appellant was in the company of 2 other people, I consider that **simple robbery under section 296(1)** rather than capital robbery under section 296(2) of the Penal Code was the offence proved beyond reasonable doubt.

**16.** I will in the event partially allow the appeal by quashing the conviction for robbery with violence under section 296(2) and substituting therefor conviction for simple robbery contrary to section 296(1) of the Penal Code. The sentence of death imposed upon the Appellant is set aside. I will sentence the Appellant to ten (10) years imprisonment effective from the date of sentencing by the trial court, that is, 30/04/2012. To that limited extent only does the appeal succeed. It is so ordered.

**DATED AND SIGNED AT MURANG'A THIS 2<sup>ND</sup> DAY OF MARCH 2017**

**H P G WAWERU**

**JUDGE**

**DELIVERED AT MURANGA THIS 3<sup>RD</sup> DAY OF MARCH 2017**