REPUBLIC OF KENYA

IN THE HIGH COURT

AT BUNGOMA

Criminal Appeal 38 of 2010

(Appeal from the judgment of the Resident Magistrate Hon. J. O. Magori in Sirisia court in cr. Case no.152 of 2009)

BEATRICE CHEMENGU NAMACHI :::::::::::::::::::::::::::::::::::: APPELLANT

~VRS~

REPUBLIC :::::::::::::::::::::::::::::::::::: RESPONDENT

JUDGMENT

The prosecution evidence on which the Appellant was convicted was that following a complaint of obtaining money by false pretences police officers arrested the Appellant on 24/3/2009 and took her to Cheptais Police Station. They had no cells. P.C. Paul Mibei (PW3) P. C. John Saina (PW4) and P. C. Pauline Cherongon (PW6) were directed to take her to Chesikaki Police Station for the night. On reaching Cheptais stage the Appellant suddenly relieved herself and used the excreta to smear PW3 and PW4. PW6 was sitting with the driver in front cabin of the vehicle. She heard the commotion and checked to find her fellow officers had been smeared. A decision was made to return to Cheptais Police Station. On reaching the station the Appellant jumped out of the vehicle and picked a piece of wood which she used to hit and damage a hurricane lamp and communication set make Simoco at the report office.

PW7 P. C. Wahab Harun was at the police station when the vehicle left with the police officers for Chesikaki but after 15 minutes the vehicle returned in high speed. She saw the Appellant alight with faeces in her hand and enter the report office. PW3 and PW4 alighted. Their clothes were smeared with faeces. The Appellant took a piece of wood which she used to damage the lamp and communication set. She was restrained by being tied. This is what led the Appellant to be charged with obstructing police officers contrary to section 253 (b) of the Penal code by excreating and smearing faeces on PW3 and PW4, malicious damage to property contrary to section 339 (1) of the Penal Code by damaging the set and lamp both valued at Ksh.180,450/= the property of Kenya Police and disorderly conduct in a police building contrary to sections 60 (1) and 63 of the Police Act (Cap.84) by banging the report office desk and hurling insults at police officers thereby disrupting normal police activities.

The record shows that the Appellant gave sworn defence in which she denied the charges. She stated that she was arrested for allegedly obtaining money by false pretences and taken to Cheptais Police Station. Here she was finger-printed and asked to board police vehicle which she did. She was driven for about 500 metres and returned to the station. On the following day she was charged in court. She denied that she had smeared the officers with any faeces. She alleged that there was a grudge between her and the police and that she had complained in O.B. no.21 of 24/11/2008 that the police had damaged her goods. She had the O.B produced by DW2 Corporal Hassan Yator of the police station.

The trial court considered the evidence by the prosecution and the defence and concluded that the Appellant while being taken to Chesikaki Police Station relieved herself in the police vehicle and used the dirt to smear PW3 and PW4. The officers decided to return to the station and that is when the Appellant came out of the vehicle and picked a piece of wood to damage the named police property. In the trial court PW3's and PW4's smeared clothes were produced in evidence. The damaged lantern and set were also produced, as was the piece of wood. I have looked at all the evidence as recorded and have come to the independent conclusion that the events as narrated by the police officers did happen. There was, however, no evidence that the Appellant banged the report office desk or that she hurled insults against the officers. The allegations in count 5 were consequently not proved and the Appellant was wrongly convicted of disorderly conduct in a police building.

Were the police officers obstructed by the act of the Appellant relieving herself and smearing dung at them? They were certainly made dirty and put to embarrassing inconvenience, but were not obstructed from carrying out their duties. They are the ones who decided to return to Cheptais Police Station. They had the option of proceeding to Chesikaki Police Station. Once again, the charge in count 3 was not proved and the Appellant ought to have been acquitted.

I find that the charge of malicious damage to police property under section 339 (1) of the Penal Code was proved beyond doubt in count 4 as the Appellant picked a piece of wood which he used to break and damage the lamp and the communication set. The Appellant was properly convicted in respect of count 4.

The consequence is that the appeal against conviction and sentence in counts 3 and 5 is allowed. The convictions are quashed and the sentences set aside.

In count 4, the Appellant was asked to serve 2 years in jail. The offence carries a maximum penalty of 5 years. She had a previous conviction that was not relevant. The conviction related to these same proceedings in which the court had sentenced her to 6 months in jail for being in contempt under section 121 (c) of the Penal Code. The Appellant had shouted in court saying she was being oppressed by the court and the prosecutor. The damaged property was public property. The damage did not follow any provocation. I will not interfere with the sentence, given the facts of the case. In any case, she has already served it.

Dated, signed and delivered at Bungoma this 16th day of July 2012.

A. O. MUCHELULE
JUDGE