



REPUBLIC OF KENYA

High Court at Eldoret

Criminal Appeal 136 of 2009

WYCLIFFE WANGUSI MAFURA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

This appeal arises from the decision of Honourable Nathan Shiundu SRM delivered on the 19 August, 2009 in Eldoret Criminal Case No. 570 of 2009

FACTS

The Appellant was charged with the offence of Robbery with Violence contrary to Section 296 (2) of the Penal Code.

On the 24th day of January, 2009 in Eldoret township the Appellant jointly with others whilst armed with a dangerous weapon, namely a pistol robbed **SOPHIA LOBOLEI** of Kshs 70,000/= and immediately before the time of such robbery wounded the said **SOPHIA LOBOLEI**.

The Appellant was convicted and sentenced to death and being aggrieved with the decision preferred this Appeal.

The Petition of Appeal contains five (5) grounds of appeal and the Appellant chose to argue his appeal by way of Written Submissions.

It was the Appellant's argument that the **P3 FORM** produced as evidence was incompetent and improper as it had not been signed by the issuing officer and examining doctor. Nor did the **P3 FORM** contain a seal or stamp of the hospital. The Appellant contends his fundamental rights were infringed upon.

The Appellant prayed that the Appeal be allowed and the conviction be quashed and the sentence set aside.

The appeal was opposed by the Counsel for the State who argued that the prosecution had proved its case beyond reasonable doubt.

That **PW1** in her evidence knew the Appellant by appearance and name as she had served him previously.

The offence was committed at 2.00 p.m. in day light and the witness (**PW1**) was able to positively identify the Appellant.

Counsel submitted that PW2 heard screams from PW1's shop and went to check and found robbery in progress but fled without offering assistance as one of the robbers was armed with a gun. This witness saw the Appellant being arrested and was able to positively identify the Appellant.

In his evidence **PW4** stated that he found the Appellant had been arrested by members of the public and he re-arrested him and after conducting investigations charged the Appellant with the offence.

Counsel urged the court to dismiss the appeal as the same had no merits and further urged the court to uphold the conviction and sentence.

We have heard the arguments of both Appellant and Counsel for the State and find three (3) issues for determination.

- 1) Identification.
- 2) Infringement of fundamental rights
- 3) "violence"

This being the first appeal, as an appellate court this court has a duty to re-assess and re-evaluate the evidence and come up with an independent conclusion. Refer to the case of **LUCAS KERARIO SANGA -VS- REPUBLIC (2011) eKLR**

Starting with the issue of identification, we note that the offence took place at 2.00 p.m in broad daylight.

In her evidence **PW1** stated that she had served the Appellant and his accomplice on the previous day and that she was able to positively identify him by way of recognition.

The evidence of **PW2** was to the effect that he heard screams coming from PW1's shop. Being curious he went and found the robbery in progress and fled as he saw one of the robbers was armed with a gun. The Appellant then tried to run away but was apprehended by members of the public and **PW2** witnessed this arrest.

The witness confirmed that the incident occurred in broad daylight and that he was able to positively identify the Appellant.

The arresting officer (**PW4**) confirmed that the Appellant had been arrested by members of public and he re-arrested the Appellant but the other accomplice had fled with the weapon together with the money stolen from **PW1**. The witness also confirmed that the incident occurred in daylight.

On the last issue relating to violence the evidence of **PW3** the clinical officer who examined PW1 within an hour of the incident found that the Complainant had visible injuries to the anterior wrist and left wrist and classified the degree of injury as harm and produced the **P3 FORM** as an exhibit.

FINDINGS:

After perusing the proceedings we found that the ground of appeal relating to the improper **P3 FORM** and its inadmissibility to have no merit we find that the **P3 FORM** was properly signed by the medical officer.

We find that the same is admissible and proves one of the ingredient of the offence, namely "**Violence**".

We find that the injuries listed by **PW3** in the **P3 FORM** are consistent and corroborate the evidence of **PW1**.

On the issue of identification we find that the evidence of **PW1** and **PW2** to be consistent. We are satisfied that the Appellant was positively identified and that **PW1** and **PW2** had ample opportunity to observe the Appellant at 2.00 p.m. The incident occurred in daylight and we are satisfied that the surrounding circumstances were favourable for identification. This court finds that the identification by **PW1** was also by way of recognition and that it was not a case of mistaken identity as alleged by the Appellant.

CONCLUSION.

We find that the ingredients of the offence of robbery with violence were proved by the prosecution beyond reasonable doubt , in that the Appellant was placed at the crime scene and participated in the robbery whilst armed with a dangerous weapon and used acts of violence during the incident.

We find that the appeal has no merits for reasons as stated above and the same is dismissed.

It is so ordered.

Dated and delivered at Eldoret this 11th day of October 2012.

F.AZANGALALA
JUDGE

A.MSHILA
JUDGE

Coram: Before Hon. F. Azangalala, A Mshila JJ

CC: Oscar, Andrew

Appellant: Present in person.

Counsel for the State: Wainaina

Language: English.