



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
APPELLATE SIDE
CRIMINAL APPEAL NO. 1345 OF 1997

From Original Conviction and Sentence in Criminal case No.650 of
1997 of the Resident Magistrate's Court at Yatta, P.T. Nditika, Esq.

STEPHEN KITONYI KISILU APPELLANT

VERSUS

REPUBLIC RESPONDENT

JUDGMENT

The appellant was charged with the offence of attempted robbery contrary to section 279(1) of the Penal Code.

The complainant and his wife were attacked by a group of persons and cut the wife. At that stage the complainant was not able to recognize anyone.

Later he and others followed foot prints which led to the appellants house. He was found building. He was arrested and a panga was then recovered together with touches shoes.

The appellant in his defence stated that he knew nothing of this case.

At the scene of the crime the complainant stated that he recognized no one.

At his house the witnesses stated they spotted the appellant after following foot prints that led to his house. There the appellant then ran away.

I found that the complainant stated "he suspected the appellant".

It is therefore clear that the fact that foot prints - three in number led to he appellants house was not evidence that those foot prints were linked to him.

There ought to have been ample time for the witnesses to give evidence in chief. The trial magistrate recorded very brief account which made it not very clear as to the evidence.

One thing that is certain is that the appellant if convicted to this offence should have been investigated.

Statements under enquiry ought to have been taken. Motive of attack by the appellant ought to be established. There seems not to be any grudge or relationship established by the prosecution to see why the attack may have been done and if so by the appellant.

This was a very bad investigated case. To make it worse the magistrate failed to record adequately the full proceedings before the court.

Further - it seems that the evidence was established on suspicion.

The trial magistrate should have complied with section 169 of the C.P.C. in order that a full reasoning of how she came to have arrived at the decision.

I hereby allow this appeal, quash the conviction and set aside the sentence.

Dated this 9th day of March, 1999 at Nairobi.

M.A. ANG'AWA

JUDGE