



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

APPELLATE SIDE

CRIMINAL APPEAL NO. 173 OF 1998

FROM ORIGINAL CONVICTION AND IN CRIMINAL CASE

NO....OF.....SENTENCE OF THE SRM'S MAGISTRATE'S COURT

AT MASENO

ELIJAH AYWA ZEDEKIAH.....APPELLANT

VERSUS

REPUBLICRESPONDENT

J U D G M E N T

The appellant Elijah Aywa Zedekiah was originally charged jointly with another with three counts of Robbery with violence c/s 296(2) of the Penal Code.

The record before us shows that the appellant pleaded guilty to all the three counts for which he was convicted and sentenced to death. He has now appealed against both the conviction and sentence.

The thrust of the appellants appeal as contained in his petition of appeal is that he was not conversant with the court language, that he was not warned of the consequences of pleading guilty to the said charges and that the learned trial magistrate did not examine all the circumstances surrounding the plea before conviction.

As the first appellate court, it is our duty to examine the entire record before us and come to independent conclusions. This we have done.

The record shows that when the appellant first appeared in court on 3rd December, 1997, the charge was read and explained to him in Luhya language in which he also replied "It is true that I robbed the complainant as alleged and assaulted him." He repeated this in all the other two counts. The prosecutor then is said to have told the learned trial magistrate that he would give the facts in respect of the appellant on the following day.

On 4th December, 1997 the Court is on record as stating.

"Accused is reminded of the charges in Luhya language and warned that the penalty is death and being asked whether he admits or denies the charge replies as follows:-

ACCD.

I still maintain my plea of guilty to the three charges.”

The prosecutor then gave a statement of facts to which the appellant admitted by saying.

“I admit all the facts to be true.”

The court then found the appellant guilty on his own plea and convicted him on all the three counts. The appellant was given an opportunity to mitigate but said he had nothing to say. The learned trial magistrate handed down the only sentence prescribed by law, that is death.

The appellant admitted before us that he is a Luhya. He must be as the record also confirms the charges were put to him in the Luhya language. We find no reason why the learned trial magistrate could have stated so in his record if the appellant did not understand the language. We therefore do not believe the appellants contention that he did not understand the language used.

The learned trial magistrate warned the appellant of the consequences of pleading guilty to the said charges. The words on the record are clear and unambiguous the penalty is death. The warning was in Luhya language but still the appellant maintained his plea of guilty.

The prosecutor gave a concise and detailed account of all the three counts which the appellant also admitted. He did not complain of any police brutality while in custody or that he was mentally unstable. In our judgment he must have understood the facts and admitted the truth thereof.

The learned trial magistrate complied strictly with the provisions of section 207(1) and (2) of the Criminal Procedure Code. On our part, we find that the appellant pleaded guilty to the charges, the said plea was unequivocal and the conviction was therefore well founded.

There is only one mandatory sentence provided under the law upon conviction under section 296(2) of the Penal Code and that is death. We have no jurisdiction to interfere with the same. Accordingly this appeal is dismissed. Order accordingly.

Dated at Nairobi this 4th day of December, 1998.

A. MBOGHOLI MSAGHA

M.A. ANG’AWA

JUDGE

JUDGE