



IN THE COURT OF APPEAL

AT NAIROBI

CORAM: GICHERU, TUNOI & SHAH JJ.A

CRIMINAL APPEAL NO. 89 OF 1995

BETWEEN

KAMAKEI LEYAGU.....APPELLANT

AND

REPUBLIC.....RESPONDENT

(Appeal from a conviction, judgment, decree, order of the High Court of Kenya at Nairobi (Mr. Justice V. V. Patel) dated 28th December, 1994,

in

H.C.CR.A NOS: 205/92 & 785 OF 1993)

JUDGMENT OF THE COURT

The appellant, Kamakei Leyagu, was jointly charged, with Loisula Lepelolis, on four counts of robbery contrary to section 296(1) of the Penal Code. He was the second accused in the Chief Magistrate's Court. The first accused in that court was Lepelolis who pleaded guilty to the said charges and was sentenced to ten(10) years imprisonment on each count, the prison terms being concurrent. The appellant pleaded not guilty, and after the trial, was convicted of the said charges. As it is not relevant here we would not go into the charges preferred against the other accused persons in the Chief Magistrate's Court.

The appellant appealed against both his conviction and sentence of six(6) years and twelve strokes, to the superior court. His appeal to that court was summarily rejected under section 352(2) of the Criminal Procedure Code by Patel, J.

The petition of appeal presented to the superior court by the appellant quite clearly referred to the appellant's complaints relating not only to the sentence but also to the convictions on points of law as well as facts. The petition of appeal contained at least five matters, which, if points of substance, would have vitiated the convictions.

It is well settled that an appeal to the superior court falls within section 352(2) of the Penal Code only if the ground(s) of appeal raise any one or both of the following points:

- 1.The conviction is against the weight of evidence.

2.The sentence is excessive.

An appeal which raises issues of law and/or mixed law and facts cannot be summarily dismissed.

In normal circumstances we would have remitted the matter back to the superior court directing it to admit and hear the appeal on its merits but in this particular case the appellant has abandoned his appeal against convictions and confined himself entirely to appeal against the sentence. This court, sitting as the court of last resort, has no jurisdiction to interfere with the sentence but it has, under section 3 of the Appellate Jurisdiction Act the power, authority and jurisdiction vested in the High Court.

We invoke the said power to inquire into the adequacy or otherwise of the sentence passed by the Chief Magistrate's court. The appellant was sentenced to a term of six years imprisonment on each count, of robbery contrary to section 296(1) of the Penal Code, the prison sentences being ordered to run concurrently. He was also to receive two strokes of corporal punishment on each of the four counts and was to be placed under police supervision for five years after serving his sentence.

The four counts refer to quite serious matters. Three of the complainants who were robbed were innocent tourists who were waylaid whilst travelling in a tour vehicle and robbed of all their belongings and cash under threats of some violence. The first complainant was the tour vehicle driver who was also robbed of valuables and cash. Although most of the items robbed were recovered the actions of the appellant remain a blot on the Kenyan tourism industry.

We have considered all the circumstances surrounding the crimes in question and we see no justification whatsoever to interfere with the sentences. This appeal is dismissed.

Dated and delivered at Nairobi this 18th day of December, 1998.

J. E. GICHERU

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JUDGE OF APPEAL

P. K. TUNOI

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JUDGE OF APPEAL

A. B. SHAH

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JUDGE OF APPEAL

I certify that this is

a true copy of the original.

DEPUTY REGISTRAR.