

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL APPEAL NO 1276 OF 1993

JAMES NDUNGU KABUGA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The appellant was convicted of attempting to extort Shs. 350, 000/- from the complainant (P.W.1) threatening him that he was hired with other people to kill the complainant.

According to the complaining on 1st October, 1992 the appellant went to him at his petrol station office and told him that his (complainant's) step brother John had approached him (appellant) and others and were paid some money to kill him (complainant). He did not say how much. At that stage the appellant called his companion called Kinyanjui in the office and Kinyanjui confirmed to the complainant what the applicant had said to the complainant.

The complainant earlier said that he (complainant) did not get on well with the above named step brother as they had a court case over family land.

In his further testimony the complainant said that the appellant told him that his said step brother wanted the complainant killed because of the land dispute adding that he (appellant) would not kill him (complainant) as the complainant was not worthy of killing. The appellant then suggested three alternatives to the complainant, v.z (1) Tit for tat (2) Arrest of the step brother (3) Appellant to arrange for a meeting between the complainant and the step brother to discuss the land dispute.

The complainant added that he told the appellant to give him time to think and giving the appellant his telephone number asked the appellant to ring him up at a later date. The complainant then thanked the appellant and Kinyanjui sincerely for giving the information and bidding them goodbye gave them Shs. 500/- for tea.

Continuing his evidence the complainant stated that the appellant and Kinyanjui visited him on the 9th October, 1993 and told him that the step brother had paid them Shs. 350, 000/- to kill him and they were to meet the step brother on the 12th October, and he (complainant) can send his representative to hear what they discussed. The complainant gave the appellant Shs. 300/- and they left. Thereafter the appellant rang him once saying they won't go back to him (complainant) at his petrol station as his (appellant's) group had become suspicious. The complainant felt his life was in danger and reported the matter at Kiambu Police Station and the appellant was arrested.

P.W.3 Police Inspector contacted the stepbrother (P.W.7) who denied having paid Shs. 350,000/- to the appellant to kill the complainant. He denied even knowing or seeing the appellant. The stepbrother P.W.7 confirmed this in his evidence.

The appellant denied the charge. He said that the C.I.D did not like him and arrested him. He added that he knew the stepbrother.

On the above evidence for the prosecution, one would have ruled that the appellant had no case to answer.

In convicting the appellant, the learned magistrate said that although the complainant's evidence was showing that neither the appellant nor his colleague had asked for any money from the complainant, it was clear that they were out to play some mischief, their method was "scare mongering" and their acts were not only mischievous but illegal. So saying the magistrate convicted the appellant for the offence as charged.

This appeal must be allowed. There was not one iota of evidence to prove that the appellant attempted to extort from the complainant cash money Shs. 350,000/- as alleged in the charge. The charge must be proved as laid and it was not so proved in the instant case. There is no room for philosophy in a court of law.

The appeal is allowed. The conviction is quashed and the sentence set aside. The appellant has served the sentence.

Dated and delivered at Nairobi this 7th day of April, 1995

V.V. PATEL

JUDGE