



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MOMBASA**

**CRIMINAL APPEAL NO. 716 OF 1992**

**COLUMBAS NAKORI LONGOR.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**(From original conviction and sentence in Criminal Case No 373 of 1992 of the District Magistrate's Court at Lamu - J C Nyundo, Esq, DM 1)**

**JUDGMENT**

The appellant, Columbas Nakori Longor, who was an administration police constable stationed at Lamu, appeals to this Court against his conviction by the learned 1st Class District Magistrate, Lamu for the offences of creating disturbance contrary to section 95(1) (b) of the Penal Code; and for the offence of malicious damage to property contrary to section 339(1) of the Penal Code. He was sentenced to a fine of Kshs 5,000/- or in default 6 months imprisonment in respect of count 1 and to a fine of Kshs 3,000/- or in default 3 months imprisonment in respect of count 2.

There is no dispute on the facts that at about mid-night on the 4th of February, 1992 the appellant went to the shop of complainant, Mohamed Maalim (PW1) within Langoni village. The shop was still open to customers. There were some people outside the said shop chewing some *miraa*. They were Hamaa Basmi (PW2) and Swadik Sheikh (PW3). When the appellant entered the said shop, he demanded according to the evidence of the complainant to be sold some *bhang* but he told him that he had no *bhang* for sale in his shop. The appellant then became upset and picked a bottle of soda which the complainant had at the counter and smashed it on the floor. The complainant then called for help to eject the appellant from the shop and PW2 and PW3 who were outside the shop readily came to his assistance and the appellant was removed from the shop. In order to avoid any further disturbance, the complainant decided to close the door to his shop. This annoyed the appellant who started pelting the door with stones from outside. The disturbance attracted several people who proceeded to the scene. Among those who went there was the appellant's own colleague, a PC Boniface Ongange Okumu (PW4) who actually found the appellant while throwing stones at the door of the shop. He demanded to know from the appellant why he was behaving like that he stated that he had been forcefully removed from the shop while demanding his change for cigarettes alleging that he had given the shop owner Kshs 100/- and not Kshs 50/- as the shopkeeper was alleging. PC Aggrey Opicha (PW5) who was also attracted to the scene by the noise also found the appellant throwing stones at the complainant's shop door and he tried to calm him down to report the matter to the police instead of behaving in that manner.

PW5 then went to the police lines and reported the incident to Sgt Baraza (PW7) who together with other officers proceeded to the scene. They found a big crowd having formed outside the complainant's shop and he was shown the door of the shop which the appellant had allegedly pelted with stones. He saw several stones scattered outside the main door and the damage done to the door. He interrogated the complainant before taking the appellant to the police station where he was charged with the offences that were laid against him in counts 1 & 2.

The defence of the appellant was that he was simply a victim of circumstances. He stated that on the material night, having taken some drinks at the police canteen, he decided to go and buy some cigarettes at the complainant's shop. It was then around mid-night. He gave the complainant Kshs 100/- for the

cigarettes but the complainant alleged that he had not given him any money. When he complained, he was ejected out of the shop but he denies having caused any disturbance while outside the said shop or having pelted the complainant's door with stones.

In his petition of appeal, the appellant re-iterated his innocence and stated that he is the one who ought to have been the complainant as PW1 had taken his money and refused to sell to him any cigarettes.

There is no dispute on the facts that the appellant had gone to the complainant's shop on the material night. It was about 12.00 mid-night. He was from the police canteen where on his own admission, he had been taking some refreshments. When he went to the shop of the complainant, he states that he had asked for cigarettes but the complainant says that he had asked for *bhang*. Whatever he had asked for, it is clear that nothing was sold to him. According to the testimony of the complainant, the appellant became rowdy and smashed the bottle of soda which he had on the floor. The appellant was then ejected out of the shop by the complainant assisted by PW2 and PW3.

I am satisfied that while outside the said shop, the appellant started pelting the door of the shop with stones. This is clear from the evidence of the complainant and was corroborated by that of PW2 and PW3. Perhaps the most damaging evidence for the appellant came from his own colleagues in the force, PC Boniface Okumu (PW4) and PC Aggrey Opicha (PW5) who all saw him throwing stones at the door of the complainant's shop. PW5 even tried to calm him down by asking him to go and report the incident at the police station if he thought that he was the one being offended. When he failed to do so, PW5 himself went and reported the matter. Sgt Barasa (PW7) proceeded to the scene and he found the appellant there.

He saw the stones outside the door and the damage caused. I regard PW4 and PW5 as independent witnesses. Their evidence is consistent with that of PW1, PW2 and PW3 as concerning the behaviour of the appellant on the material night. I think that the learned trial magistrate rightly disbelieved the testimony of the appellant. His behaviour on that night, appears consistent with that of a person who was drunk. Indeed he was straight from the police canteen where he was taking some refreshments whatever it was before this incident occurred.

Upon my own evaluation and assessment of the recorded evidence, I am satisfied that the conviction of the appellant for the offences of creating disturbance and malicious damage to property were proved beyond all reasonable doubts. I uphold his conviction on both counts.

The sentence that was imposed on the appellant was well merited and I find no basis to interfere.

In the result, the appeal against both conviction and sentence is dismissed.

**Dated and Delivered at Mombasa this 24th day of February 1994.**

**S.O.OGUK**

**JUDGE**