

REPUBLIC OF KENYA

Chome v Republic

High Court, at Nairobi (Appellate Side) June 17, 1985

O’Kubasu J

Nyeri Court Martial Criminal Appeal No 8 of 1984

(Original Sentence in the Court Martial at Langata Barracks, E F Aragon, Esq)

Advocates

Appellant present, unrepresented

Lieutenant Colonel T K Githiora (State Counsel) for respondent

June 17, 1985, O’Kubasu J delivered the following Judgment.

The appellant was convicted on his own plea of guilty, of mutiny, contrary to section 25(2) of the Armed Forces Act (cap 199 Laws of Kenya). He was sentenced to nine (9) years imprisonment and dismissed from the Armed Forces. He is now appealing against sentence. The facts of the case were as follows :The appellant spent the night of July 31, and August 1, 1982 in a friend’s house at Californial Eastate. On August 1, 1982 at about 7.30 am he was informed by someone called Ngelenge Tinga that the Government had been overthrown by the Armed Forces.The appellant decided to walk to KAF Eastleigh which was his duty station. After identifying himself at the gate he was allowed to enter the base. He put on his uniform and went to the armoury where he picked an SMG, two magazines and 68 rounds of ammunition. He and Superintendent Kasila were told by one Sergeant Juma Onyango to board a KAF Land Rover which was parked nearby. There were about ten armed airmen in the Land Rover. The Land Rover was then driven towards Kariobangi. At the roundabout of Juja Road and Outer Ring Road the appellant jumped out of the moving land rover to pick one of his magazines which had accidentally dropped from his hand.The appellant was injured on his right thigh as he jumped out of the vehicle. The appellant remained at that roundabout until 8.45 am when he stopped a passing KAF land rover carrying two soldiers wearing Lieutenants ranks and the driver. The Land Rover dropped the appellant at KAF EaStleigh armoury but on alighting the appellant found Sergeant Juma Onyango who questioned him as to why he had come back. The appellant explained what had happened but the sergeant told him to get into the same Land Rover which had brought him and go with the others to town. The appellant returned to the land rover where the two Lieutenant were still sitting. One of them asked the appellant for 10 rounds of ammunition which the appellant willingly gave him. The Land Rover was then driven cut of the base along Juja Road up to City Centre picking one Corporal Tumbo.On the way they stopped near the Inter-Continental Hotel where the driver of that Land Rover with mud. Two soldiers (Superintendent Odwako and Superintendent Okwiri) joined them. They then drove to South ‘C’ then Embakasi. Corporal Tumbo, Superitendent Odwako and Superitendent Okwiri jumped out of the Land Rover and went into a police 99 car which was parked nearby. The appellant joined some airmen in a commandeered Honda Civic car and it was Superintendent Senge who was driving. They left Embakasi at about 10.20 am following Outer Ring Road up to Kariobangi where they called in a certain house for about 20 minutes before returning to the vehicle. The appellant alighted near Huruma Estate where he found several KAF soldiers firing in the air and shouting “power power”. The appellant also shouted “power” in response and fired one round in the air. Afterwards at about 11.00 am the appellant walked to KAF Eastleigh base where he took lunch in the company of one Superintendent Eremani Musangi. After lunch the two sat under some trees near the Sports Pavilion up to about 4.00 pm when 50 ACB helicopter came and bombed KAF Headquarter building. The appellant ran and took cover in a ditch. He later walked to Sergeant’s Mess where he joined many other airmen who had grounded their arms under a white flag waiting to surrender to the Army personnel. They were all arrested at about 5.00 pm.

The above facts were admitted by the appellant. The appellant willingly participated in the mutiny. He armed himself heavily and traveled extensively. He even shouted "power" as he fired in the air. This was one of those who were fully involved in these disturbances.

The appellant complained that his sentence was never reduced by the Review Board. Appellant comes from a family of 21 sons as his father has four wives.

I have considered what the appellant said in mitigation but I find this to be a case in which the appellant was a willing participant. He was sentenced to nine (9) years imprisonment and dismissed from Armed Forces. As there is no remission I would now exercise mercy and hence I reduce the prison sentence from nine (9) years to seven (7).

Order accordingly.