



REPUBLIC OF KENYA

Owinjo v Republic

Court of Appeal, at Kisumu June 25, 1985

Nyarangi JA, Platt & Gachuhi Ag JJA

Criminal Appeal No 37 of 1985

(Appeal from the High Court at Kisumu, Schofield J)

**June 25, 1985, Nyarangi JA, Platt & Gachuhi Ag JJA delivered the following**

**Judgment.**

The appellant Joram Oloo Owinjo was charged with two others on three counts namely, stealing a motor vehicle contrary to section 278 "A": attempted robbery contrary to section 271(1) : and robbery contrary to section 296(1) of the Penal Code. At the trial before the Senior Resident Magistrate Kisumu, one of them was acquitted but the appellant and another were convicted on all three counts, and sentenced to 4 years imprisonment and two strokes on the first count; and 4 ½ years imprisonment and three strokes one each of the second and third counts. Their appeal to the High Court (Schofield J) against their convictions and sentences were dismissed. The appellant now appeals alone to this court, on all the three counts and lists 6 grounds of which may be summarized as; that he never admitted any of the charges; the prosecution failed to produce cogent evidence to prove his guilt; the witnesses failed to identify the registration numbers of the motor vehicles; identification parade was not properly conducted, his finger prints could not be traced on the vehicle and that the learned magistrate and the honourable judge of the High Court on appeal overlooked the major critical loopholes to prove his guilt. It is undisputed fact that a Peugeot 404 pick-up vehicle was stolen on the night of July 24/25, 1983 at about 2.00 pm, thereafter in same night the police found the said vehicle abandoned at Mijile petrol Station. During the same night just after 2.00 pm the said vehicle was used in attempted robbery at Gumba Road petrol Station, the property of Bachulal Potatilal. The robbers smashed the glass door using heavy hammer and iron bar. The robbers did not manage to steal anything at Gumba Road petrol Station. They attracted people at the nearby bus stand who ran to the Petrol Station shouting "thief". The robbers got into their stolen vehicle and drove away at a high speed. As they were driving off the attendants saw one of the robbers at the back of the said pick-up wearing a red shirt.

Immediately thereafter, at about 2.30 am the robbers struck at Mijeje Esso Petrol station, smashed the glass door of the office and forced open the safe door with a big hammer and an iron bar. The stole Kshs 3,307.05 form the safe. The night watchman Mitato Shinane blew his whistle which attracted people to run to the petrol station. The police in their 999 patrol car on seeing people running, also went to the petrol station. The robbers on seeing the police got into their vehicle and drove off. As the vehicle drove off the night watchman and two petrol attendants noticed one of the robbers as wearing a red shirt.

O C Benjamin Muyungu, while in the Police 999 car going to Mijale Petrol Station saw 6 people who ran away from the office and jumped into the motor vehicle a Peugeot pickup white in colour. They were armed with pangas and one had a hammer. The police gave chase and fired at the vehicle repeatedly to a total of 11 rounds. The police never lost sight of the Peugeot pick-up. The pick-up drove over a block of stones and lost speed as it took a junction to Mijeje Petrol Station because of a punctured tyre. One of the occupants fell of at a distance of 30 metres from the police patrol car. The police stopped and P C Benjamin Munyungu picked the man up and put him in the car. That person was wearing a red pullover and it turned out to be the appellant. In pursuit of the pick-up they found it crashed into a stationary lorry inside Mijeje Petrol Station – and the occupants having escaped.

The appellant can appeal to this court on a point of law only this being a second appeal. Of the grounds of

appeal filed, only the one relating to identification, raised a point of law. Although the petrol attendants in both stations stated that they saw one of the robbers wearing a red shirt, this would not be relied upon in the absence of identification parade. However, there is this strong evidence of Police Constable Benjamin Munyungu that the Pick-up they were chasing had four people at the back and two in front. The pickup was open at the back where the appellant was. The appellant who was arrested by Police Constable Benjamin Munyungu after falling from the pick-up could in no way have been in the stolen pick-up that was chased by the police without losing sight of it until he fell off, if he was not one of the robbers. This evidence was relied upon in convicting the appellant and was held on appeal.

We have considered all his grounds of appeal and his further submissions to us. We are satisfied that the appellant was properly convicted.

**Accordingly we dismiss this appeal.**