



**REPUBLIC OF KENYA**

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

**APPELLATE SIDE**

**CRIMINAL APPEAL NO 890 OF 1982**

**(from Original Conviction and Sentence in Criminal Case No 2008 of 1982 of the 1st**

**Class District Magistrate's Court at Nairobi P J D Mwangulu Esq)**

**FREDRICK NGANGA ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

**CORAM: PORTER J**

**Appellants absent, unrepresented**

**K J Kinyanjui (Senior State Counsel) for respondent**

**JUDGMENT**

The appellant who is charged with demanding property by written threats contrary to Section 299 of the penal Code for that he on August 4, 1982 at Kiserian Trading Centre in Kajiado District of the Rift Valley Province withdraw to an extent Kshs 200,000 from James Maviae and knowing the contents of the writing without reasonable or probably cause caused the said James Maviae to receive a letter containing threats to kill the said James Maviae.

The appellant was convicted after trial and sentenced to a period of 5 years imprisonment.

On the relevant day at about 9 am PW 7 said that he was at his butchery when he saw the accused the appellant who handed him a letter and told him that it belonged to Peter. The letter was in a closed envelope with Peter on the front PW 2 did not know that man but PW 5 said it belonged to their employer who is PW 1. The accused/appellant asked for a match and opened the letter and read it and then took it to the owner. PW 1, PW 3 and PW 4 were in PW 1's office when the appellant came with the letter. He handed it to PW 1 who asked him where he got the letter from. The letter was in an envelope closed but it showed as if it had been opened and closed. It was addressed to Peter according to PW 1 on the envelope. However the appellant told PW 1 the letter was his and so he opened it. The letter was in face for PW 1 I have had certified translation prepared of the original Swahili and there is no doubt that it is in demand for Kshs 200,000 cash and directions as to where to leave it. It contains threats of death and injury within the definition set out in the section. It seemed that whilst the complainant read the letter the appellant left but he was called back by the complainant and asked where he had got the letter from and he said from the post office. PW 1 sent for the police and Copl Magana PW 6 attended to possession of the letter and

arrested the accused to possession of the letter and arrested the accused. The complainant also produced an earlier letter which he had received which was in similar terms.

The appellant elected to give unsworn statement and said he did not know anything about this letter neither was he connected with it. His statement did not amount to a denial that he had delivered the letter but he said that he could not see something bad and deliver such a thing to the complainant.

The learned District Magistrate in his very short judgment found that the complainant had delivered the letter to PW 1 after opening the letter and reading it. The learned District Magistrate said that he did not see any likely-hood for prosecution witnesses to lie as they had no grudge against the appellant. He said that he rejected the defence on the basis that it was the appellant who handed the letter to PW 1 and told him that it was his letter. On that basis he convicted the appellant.

There is no doubt as the learned District Magistrate found that the appellant knew the contents of the letter and without reasonable or probable cause, caused the complainant to receive the letter which did contain threats to kill him. The matter which concerns me in this case is whether he did so with intent to extort Kshs 200,000 from the complainant. The learned District Magistrate does not seem to have considered the question of whether the appellant was a messenger. He no doubt has had in mind the evidence of PW 1 who says that the appellant himself after he was arrested admitted that he had written the letter himself. However, that evidence is dismissible since it occurred after the arrest and there is no evidence as to the question of caution. One would have thought that the prosecution in possession of such information would have done something about getting samples of handwriting from the appellant and having them checked by a document examiner who, they could have called as a witness. However this has not been done and there is no evidence that it was the appellant who wrote the letter of demand. One would therefore be wrong to consider the appellant as the prime mover of this letter so far as the evidence of the prosecution is concerned.

The complainant talks about two earlier occasions on which he had received other letters but there is no allegation that the appellant bore those. There is only one conclusion to which the learned District Magistrate could have come on the evidence before him and that was a messenger certainly causes someone to receive a writing and whilst it is also true that the writing demanded Kshs 200,000 from the complainant and further that the appellant knew the contents of the writing having read it before he delivered the letter nevertheless it is difficult to say that a messenger was proceeding with intent to extort or gain anything from the complainant. One can easily draw the conclusion from the evidence that the writer of that letter certainly had the intention to extort. Whether it was a serious intention or not is another matter. It is my suspicion that it is for the principal that Section 299 of the Penal Code was drawn. It is he who through a messenger causes someone to receive the letter which he wrote. What I very much doubt is Section 299 extends to someone who is given the letter not knowing what is in it makes enquiries about the person whom it is addressed and is given information on that subject. Who then reads the letter possibly with the view to checking that information and possibly without taking any notice of contents of the letter and then delivers the letter to the person to whom he is directed. The learned District Magistrate in this case has not considered this point of view. On my own assessment of the evidence, I find it very difficult to consider as a principal a person who where he is alleged to have written the letter and although he is alleged to have known the person to whom it was addressed, nevertheless goes into a bar and ask where to find the person to whom the letter is addressed and then reads it in the presence of witnesses. If the appellant has been the principal in this matter it would not have been necessary for him to read it nor would it have been necessary for him to ask to whom the letter was addressed. It therefore seems to me in all likelihood that the appellant was not the principal in this matter but only the messenger. It was open at any time to the prosecution to call handwriting evidence to establish the allegation of an admission by the appellant although they had chosen not to do so. In all the circumstances the evidence of the prosecution fell short in this matter and this conviction is unsafe.

**Accordingly this appeal will be allowed, the conviction quashed and sentence set aside.**

**D C PORTER**

**AG JUDGE**

**1.3.1983**