



REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI

CRIMINAL APPEALS NOS 843 - 930 OF 1983

IBRAHIM ADAN APPELLANTS

VERSUS

REPUBLIC..... RESPONDENT

JUDGMENT

The appellants were charged with taking part in unlawful assembly contrary to section 78 of the Penal Code.

Section 78(1) of the Penal Code defines unlawful assembly and riot as follows:

“When three or more persons assemble with intent to commit an offence, or, being assembled with intent to carry out some common purpose conduct themselves in such a manner as to cause persons in the neighbourhood reasonably to fear that the persons so assembled will commit a breach of the peace, or will by such assembly needlessly and without any reasonable occasion provoke other persons to commit a breach of the peace, they are an unlawful assembly.”

In this case the particulars of the offence were as follows:

“On May 5, 1983 near the *manyatta* of Ibrahim Adan of Hadadde area in Wajir District of the North Eastern Province, jointly took part in unlawful assembly in that they were found taking part in unlawful meeting”.

Mr Odero who appeared for all the 88 appellants put in, with leave of the court, an additional ground of appeal which read:

“IA That the charge was incurably and fatally defective.”

In my view we can dispose of this appeal on this one ground alone. It was Mr Odero’s contention that the charge was so brief as to disclose no offence and that this defect was fatal. A case similar to the one before me is that of *Chandi Bin Khamis Mtumbatu v R* [1961] EA 587 and at page 588H the Court of Appeal said:

“It will be observed that the appellants were charged with, and convicted of, assembling with intent to commit an offence. What offence it was alleged that they intended to commit was not specified either in the charge or in the judgment of the resident magistrate and, indeed there was no evidence which would enable a finding to be made as to what offence, if any, they did intend to commit.”

And at page 590D the Court of Appeal went on to state:

“The charge in this case did not give reasonable information as to the nature of the offence charged, in that it did not indicate what the offence was which it was alleged that the accused persons assembled to commit. It seems to us that an accused person is entitled to have reasonable information of what he is alleged to have done: for instance whether it is alleged that he assembled in a group of idle and disorderly persons, or with the intention of committing assault upon passersby on the highway, or riotous interference with vehicles or housebreaking or robbery, or rape, or whatever other intention the prosecution will seek to prove. He is entitled to know in what species of unlawful assembly he is charged with participating. He cannot adequately frame his defence if he is not informed of this. Moreover, he is entitled to know with precision when the case is over of what offence he has been convicted.”

In the case before us the charge sheet referred to unlawful assembly. The appellants were not informed of what offence prosecution intended to prove. Even going through the evidence it turned out that the appellants were attending a funeral and that one of them was reading the Holy Quran.

Having considered the arguments advanced by Mr Odero for all the appellants and having considered the charge in question with its scanty particulars together with the evidence on record I am satisfied that the charge was incurably defective and fatal to the conviction. Even the evidence on record did not disclose any offence in view of clear explanation put forward by the appellants. The learned state counsel did not seek to support the conviction. I therefore allow the appeal, quash the conviction and set aside the sentences imposed. The appellants who had been sent to prison are to be released forthwith unless otherwise lawfully held; and those who were fined will be refunded.

Order accordingly.

Dated and Delivered at Nairobi this 25th November, 1983

E.O. O’KUBASU

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JUDGE