



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
APPELLATE SIDE

CRIMINAL APPEAL NO 797 OF 1982

SAMUEL SAYO.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Appeal from conviction and sentence of District Magistrate's Court at Nairobi (P.D.J Mwangulu}dated 23rd

August, 1982 in Criminal Case No 1760 of 1982 of the Resident Magistrate's Court at Nairobi

CONSOLIDATED WITH

CRIMINAL APPEAL NO 806 OF 1982

MOSES NAIPALA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Appeal from conviction and sentence of District Magistrate's court at Nairobi (P D J Mwangulu) dated 23rd August, 1982 in Criminal Case No 1760 of the Resident Magistrate's Court at Nairobi).

JUDGMENT

These appeals have been consolidated. The appellants, Samuel Sayo and Moses Naipala were charged and convicted of Robbery contrary to section 296(1) of the Penal Code (Cap 63) and were sentenced to four years imprisonment and four strokes of the cane followed by five years police supervisions and sentences.

In their petitions of appeal they complained that the trial magistrate should not have relied on the evidence of Mr. Langalel, Peter Kimanaa (P.W.1) and thereby challenged his credibility.

Briefly the facts were that Mr Kamana (P W 1) a Tanzanian was visiting his uncle (P W 2) at Namanga. At the border he met the two appellants who robbed him shs 3800 and ksh30. The appellants shared the money equally between themselves. Half of the money was recovered from each of the appellants soon

thereafter. Although the money could not be properly identified as the same money robbed of the complainant, (P W 1) it was recovered from the appellants within hours as it had not been spent.

The appellants admitted at their trial and in answer to their charge and caution statements that they actually took the money from the complainant and shared it. However, they alleged that the complainant and shared it. However, they alleged that the complainant had dropped it and the appellants took possession of it. If they actually did so honestly they would have taken the complainant and the money to the police station.

They did not do that. Instead they shared the money between themselves and each was found with almost a half of the money alleged to have been robbed off the complainant. The complainant and his uncle remained unshaken in their evidence. The appellants were at the material time employed in Public service as Administration Police and an army officer respectively. They used their authority to sub-due and to rob the complainant of his money. The mere fact that the complainant was a Tanzanian and carried Tanzanian currency did not mean that the appellants should have used their offices to rob him his money. If the complainant had committed an offence they should have taken him to the police for appropriate action. Instead they took the money and retained it in their possession for their eventual conversion to their own use. They even threatened the complainant with prosecution. The complainant was brave and should be commended for his immediate action to have the appellants apprehended for shameful offence committed by Public Officers who did not only disgrace themselves but they also disgraced the who Kenya Force. They abused their trust. The appellants were caught red-handed and confessed the offence. They were properly convicted. Their appeals against their convictions are dismissed.

The appellants though \public Officers they abused their respective offices and disgraced the name of the entire Kenya Force. They were on leave and assumed duties which they were not supposed to perform and by clothing themselves in authority of their respective offices, they robbed the complainant. The sentences of four years imprisonment together with 4 strokes of the can each cannot be said to be manifestly excessive. The appellants appeals against sentences are also dismissed.

Appeals dismissed.

Delivered at Nairobi this 6th day of December, 1982.

MATHEW MULI

JUDGE