

REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT NAKURU

(Coram: Madan and Potter, JJ A and Chesoni Ag J A)

CRIMINAL APPEAL NO 24 OF 1983

BETWEEN

ROBINSON NDUNGU NJOROGE.....APPELLANT

AND

REPUBLIC.....RESPONDENT

(Appeal from an order of the High Court of Kenya at Nakuru (Mead, J) dated 2nd October, 1981 in Criminal Appeal No 444 of 1981)

JUDGMENT OF THE COURT

On the morning of May 1, 1981 Mr Sammy Maranga Gandani found his Peugeot motor vehicle registration No KRS 075 which he had parked outside his house on the previous night missing. He reported the theft to the police. On May 6, he collected his motor vehicle at Narok Police station. It was in a damaged condition. The jack and spare wheel were also missing. On May 1, Mr Ronte Ole Murda was waiting by the roadside for a lift by any vehicle going to Ntulele. The appellant arrived driving a vehicle. There was another person with him. Mr Murda signaled him to stop. He did. The appellant agreed to give Mr Murda a lift for Kshs 3 which Mr Murda paid a Kshs 10 note. The appellant gave him Kshs 7 change. The appellant stopped the vehicle on the way to Ntulele. He asked Mr Murda to push the vehicle as it was not taking petrol properly. Mr Murda and the appellant's companion pushed the vehicle near to a bush. The appellant came out of the vehicle. He caught hold of Mr Murda by his neck. His companion caught Mr Murda by his legs, and they threw him down on the ground.

They demanded property which Mr Murda had. They robbed him of a simi, his wallet containing Kshs 2,858, wrist watch worth Kshs 1,200, hat and a handkerchief value Kshs 6. Mr Murda was shouting. The appellant threatened to kill him if he did not keep quiet. The appellant and his companion ran. Mr Murda threw a stone at the appellant which hit him on his face and he fell down. People arrived. They arrested the appellant. The appellant was delivered at Nairragie Enkare Police station. He was arrested by the police there. His companion escaped with Mr Murda's property. The vehicle which he was driving was still there. It was Mr Gandani's vehicle.

The appellant was charged with stealing it, contrary to Section 278(A) of the Penal Code (Cap 63). On a second count he was charged with robbery with violence, contrary to Section 296(1) also of the Penal Code. He elected to say nothing at his trial. He was convicted on both counts. He admitted 9 relevant previous convictions. He also chose to say nothing in mitigation. He was sentenced to five years imprisonment and ten strokes on each count, the sentence of imprisonment to run consecutively. His appeal to the High Court was summarily rejected under Section 352(2) of the Criminal Procedure Code (Cap 75).

We do not see any merit on this second appeal to us. It was a perfectly reasonable inference that the appellant stole the motor vehicle which he was driving the very next day after its' theft on the previous night. The appeals against convictions and sentence on both counts are dismissed.

Delivered this 23rd day of March, 1983.

C B MADAN

JUDGE OF APPEAL

K D POTTER

JUDGE OF APPEAL

Z R CHESONI

AG JUDGE OF APPEAL