



IN THE COURT OF APPEAL

AT KISUMU

(CORAM: Law, Miller JJA and Kneller Ag JA)

CRIMINAL APPEAL NO 82 OF 1981

BETWEEN

NICHOLAS JAMINI APPELLANT

AND

REPUBLIC RESPONDENT

(Appeal from an order of the High Court of Kenya at Kisumu (Scriven J) dated 22nd May, 1981 in Criminal Appeal No.398 of 1981)

JUDGMENT OF THE COURT

The appellant was one of three men charged with robbery with violence, contrary to section 296(1) of the Penal Code, before the Resident Magistrate at Kakamega. The particulars of the charge were that the three accused persons robbed Mrs Dorcas Sinzore, at Shamakhokho Village, of property to the value of some Kshs 1,945 and at the same time used personal violence to her. All three accused were convicted after trial and each one was sentenced to five years police supervision. The appellant appealed to the High Court. His appeal was summarily dismissed. He now appeals to this Court, his main grounds of appeal being that he was not satisfactorily identified and that the sentence was manifestly excessive. The facts of the case were that Dorcas' house was broken into by a gang of robbers who used rocks to break down the door, at about 2 am on the night of January 26, 1981. The robbers had torches. They beat Dorcas and another woman in the house named Elizabeth Omwenje, who sustained a broken arm. They stole a quantity of property, including a radio, a watch and blankets. Both women positively identified the three accused, including the appellant and deposed that they knew them well. This is really a case of recognition rather than identification. The two women were able to see the three accused by the light of the torches being used by the robbers. A neighbour, Ezekiel Jumba, heard the women's cries and was soon on the scene with other people. They had torches and followed the gang in the direction indicated by the women. After about one kilometre they came across three men, who ran away and escaped. Ezekiel recognised the appellant, whom he knew well as being one of these three men. They were arrested later that day by Assistant Chief Luka, to whom the names of all three accused had been given by Ezekiel. No stolen property was found in their possession, but a rungu and a leather jacket were recovered from the appellant's house. Both Dorcas and Elizabeth identified the leather jacket as having been worn by the appellant during the robbery.

The appellant's defence, in an unsworn statement, was that he was arrested in bed; that he had not left his house that night and that he knew nothing about the robbery.

The learned trial magistrate had no doubt that the appellant was satisfactorily identified as one of the gang

which broke into Dorcas' house, beat her and robbed her.

We have come to the same conclusion, on our own evaluation of the evidence. The appellant was recognised by Dorcas and Elizabeth and was seen by Ezekiel near the scene of the crime, when he ran away. All these witnesses knew him well. There can be no reasonable doubt as to his guilt. The sentence passed on him was not excessive, having regard to the serious nature of the offence and to its prevalence in this part of Kenya.

We order that this appeal be dismissed, both as regards conviction and sentence.

Delivered at Kisumu this 21st day of June, 1982.

E.J.E LAW

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JUDGE OF APPEAL

C.H.E MILLER

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JUDGE OF APPEAL

A.A KNELLER

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AG JUDGE OF APPEAL