



IN THE COURT OF APPEAL OF KENYA
AT NAKURU

Criminal Appeal 148 of 2006

JOHN ELIMLIM..... APPELLANT

AND

REPUBLIC RESPONDENT

(Appeal from a judgment of the High Court of Kenya

at Nakuru (Musinga, J.) dated 21st February, 2006

in

H. C. CR. A. NO. 193 OF 2004)

JUDGMENT OF THE COURT

This is a second appeal on sentence only and therefore by dint of section 361 of the Criminal Procedure Code, it can only be a valid appeal if it challenges the legality of the sentence and not the severity of it.

The appellant appeared before Nyahururu Principal Magistrate's Court on 3rd November, 2003 for a plea on three counts alleged in the charge sheet namely; *Robbery contrary to section 296 (1) of the Penal Code; Attempted rape contrary to section 141 of the Penal Code; and Robbery contrary to section 296 (1) of the Penal Code.* He unequivocally pleaded guilty to those charges and further accepted as true, the following facts as put forward by the prosecution:

“On the 02/10/03 at 5.00 p.m. the complainants in this case were within G area in Aiyum area and they were confronted by the accused. He dragged them to a nearby bush after threatening them with an iron bar. He robbed the 1st complainant 3 pullovers, 1 skirt, 1 blouse, 1 pair of rubber shoes, 4 radio compacts, 3 pairs of dry cells all valued at Kshs.2,000/=.

The 2nd complainant, was robbed of one clinic card and some cabbages and some tomatoes all valued at Kshs. 120/=. While in the process the accused attempted to have carnal knowledge of the 1st complainant but she struggled and accused could not manage. The accused threatened to use force to (sic) the complainants. A report was made to Rumuruti Police Station. The 1st complainant was issued with a P3 form. The report was that the rape was an attempt. I produce the P3 as an exhibit (Exh. 1 produced).

The accused was arrested and identified by the complainants. He led the police to where he had hidden the items in a bush. They recovered 1 skirt, a pair of rubber shoes, two pullovers, 4 compacts cassettes and three pairs of dry cells. The accused was charged of (sic) these offences.”

Upon his conviction, the appellant was sentenced to serve 5 years imprisonment on each of the two robbery counts and 7 years imprisonment for attempted rape. All sentences were to run concurrently. The superior court (Musinga, J.) dismissed the first appeal on sentence and held that the sentences were neither harsh nor excessive.

In his memorandum of appeal which he drew up in person, the appellant put forward his main ground of appeal as follows: -

“THAT, I Kindly request this honourable court to consolidate these three files and allow the sentences to run concurrently as the sentence is too harsh and excessive.”

In his oral submissions, the appellant disclosed that there were other criminal cases, three in number, in which he has been convicted and sentenced to serve various terms of imprisonment and his intention was to seek a consolidation of the current appeal with those other cases whereupon an order would be made that all the sentences of imprisonment should run concurrently. For the simple reason that those other cases were not before us and it was not clear whether there were any appeals emanating therefrom, this Court is unable to accede to the appellant's request. Appeals by the appellant, if any, relating to other cases which are not before us can only be dealt with on their merits, if and when they are placed before the court. Besides, even if those other appeals were before us we would have no jurisdiction to interfere with the sentence unless we were satisfied that the sentence is not lawful.

As for the appeal before us, we find nothing objectionable in the manner the sentences were imposed on the appellant. They are within the law and are to run concurrently. For those reasons there is no merit in his appeal and we order that it be and is hereby dismissed.

Dated and delivered at Nakuru this 2nd day of October, 2009

S.E.O. BOSIRE

.....

JUDGE OF APPEAL

P.N. WAKI

.....

JUDGE OF APPEAL

ALNASHIR VISRAM

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR.