



REPUBLIC OF KENYA
IN THE COURT OF APPEAL OF KENYA
AT NAKURU
Criminal Appeal 143 of 2005

BETWEEN

PATRICK KAMAU CHEGEAPPELLANT

AND

REPUBLICRESPONDENT

*(Appeal from a judgment of the High Court of Kenya at Nakuru (D. K. Musinga & L
. Kimaru, JJ) dated 4th February, 2005*

in

H.C.CR.A. NO. 16 OF 2003)

JUDGMENT OF THE COURT

The Appellant in this appeal is **Patrick Kamau Chege**. He appeals against his conviction and sentence for robbery with violence contrary to **section 296(2)** of the Penal Code. There were two counts as follows:-

COUNT I

On the 11th day of November 2000 at Millenium Bar Molo Township in Nakuru District of the Rift Valley Province jointly with others not before the Court while armed with home made guns, iron bars, pangas, Rungus robbed Anne Muthoni of cash Kshs 15,000/= one Radio cassette make Soni, one packet of mini packs wine, 2 quarter of bond beer wine all valued at Kshs.23,000/= and at or immediately after the time of such robbery used personal violence to the said Anne Muthoni.

COUNT II

On the 11th day of November 2000 at Millenium Bar Molo Township in Nakuru District of the Rift Valley Province jointly with others not before the Court while armed with home made guns, iron bars, pangas, Rungus robbed John Njeroge Mugo of one Seiko wrist watch valued at Kshs.10,000/= and at or immediately after the time of such robbery used personal violence to the said John Njeroge Mugo.

The key evidence in the case was that of John Njoroge Mugo (**PW2**) who gave evidence on three occasions.

On the first occasion his evidence in chief was this:-

“I reside here in Molo and I work at the Molo D.O.’s office. On 11th November 2000 around 1 a.m. I was at Millenium Bar in Molo Town with many others partaking of drinks. I noticed people force their way in and I noticed the intruders began to knock patrons down and robbed of a Seiko 5. Two of the attackers were armed with two pistols. The Bar was well lit. When the attackers left I decided to inform the police.

After three days my watch which I had been robbed was brought to me at my office. It is mine and it was worth 12,000/=. One of the suspects who robbed us in that bar that night is here. (Pointing at the accused). The watch I was robbed of is here (MFI 1) and I don’t know how it was recovered.”

There was no cross examination on this evidence but at the request of the appellant the trial was commenced afresh on the 10th July, 2002 when John Njoroge Mugo gave evidence in chief again.

This time he said as follows:

“.....I reside at Molo I am a Civil Servant. I recall at 11th November 2000 at 1.00 a.m. I was at Millenium Bar Molo with other people drinking. When some people wearing Police Uniform entered and ordered people to lie down. I was seated at the counter and was not touched first as I am a cripple. Then people robbed people of valuables before one of them called Nyakundi came and pulled me down when he checked he found I had no money. He snatched my Seiko wrist watch valued at Kshs. 10,000/=. One of the persons had a home made gun. I watched them from where I was as I was not touched first. One of them is the accused I knew before. I had known him for a long time before at Molo Town. I also recognised some of the others but are not in court now. There was enough light in the bar I saw them clearly. My watch was later recovered by the Police and I identified it. I do not know from whom it was recovered as I was not told.”

Cross-examined by the accused :

“I was in Millenium Bar drinking some sodas. I entered at 11p.m. with some visitors. You came at about 1 p.m. We were about 20 people in the bar. I reported the robbery immediately after the robbery. I recorded my statement later. I know you very well. I used to see you in Molo Town. I informed the Police I recognised you and others. I told them I recognised some. I explained to them the circumstances of the robbery I told the Police I identified some and gave the tips as to how to get you. You were very violent. I have no reason to lie against you. There was no need to inform the Police. I recognised some of the attackers. My wrist watch was snatched by the man who violently pulled me down from where I was sitting. The watch recovered is with the investigator. I identified it. I was not shown the person who had it. It was recovered after some days. I was not called to go and see those arrested. I have told you I know you very well. I have seen you in several bars and Molo town in general. We were attacked by five of you but I recognised you and two others. I was drinking soda as I was not feeling well. You threatened people and ordered them to lie down but I was seated at the counter and though (sic) (?thought) at first you were police officers but saw you as one of them. I saw and recognised and knew you were not police officers after all.”

Re-examination: Nil

The third time that John Njoroge Mugo gave evidence was on 6th November, 2002 when he was recalled at the accused’s request for further cross–examination by the appellant on this

occasion he said:-

“There was one time when I used to stay in Vumilia plot nothing has ever happened between you and me. In our office we had a housing department. I do not deal with issuance of shop licences. I had never talked with you. I recognised a number of the robbers including you. I know you and I was not ordered to lie down because I am disabled.”

The evidence relating to the arrest of the appellant was given by **P.C.David Mwene (PW5)**. He said the following:-

“.....I recall that on 17th March 2001 at 7.30 a.m. I was at Molo Police Station when we received information that one of the robbers we were looking for was seen in a certain house at Kenyatta Estate Molo. I proceeded there with the OCS and other officers with dogs. We were shown the house and we knocked. As we wanted for it to be open the suspect we were looking for who is the accused jumped out through the window and ran away. We let loose the dogs which chased and caught him. After interrogation we took him for robberies. He was involved in various robberies including the one which took place at Millenium bar and had been mentioned by one of those who saw him there. I knew the accused from other robbers (sic) (? robberies) and even were looking for him.”

PW5 added in cross-examination by the appellant:-

a bar containing at least twenty customers which would certainly be expected to be lit reasonably well and not in the sort of house where there is no electricity and lanterns and lamps are used.

There is another aspect that needs consideration and that relates to the finding by the learned magistrate and the superior court that the recognition by the single witness was corroborated by the conduct of the appellant when he was arrested. His running away was held not to be the conduct of an innocent person. However this is not very convincing corroboration given that there was also evidence that the police were looking for the appellant in respect of other crimes. If this was so the appellant might well have run away despite not being involved in the Millenium Bar robbery.

We have taken all these factors into consideration and have come to the conclusion that the case against the appellant has not been proved beyond reasonable doubt.

We hereby allow the appeal and order that the conviction be set aside and the sentence quashed. The appellant is ordered to be released unless otherwise lawfully held.

Dated and delivered at Nakuru this 3rd day of March, 2006.

P. K. TUNOI

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JUDGE OF APPEAL

E. O. O'KUBASU

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JUDGE OF APPEAL

W. S. DEVERELL

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JUDGE OF APPEAL