



REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT NAKURU
CRIMINAL APPEAL 133 OF 2003

BETWEEN

JAMES MAINA MBUGUA APPELLANT

AND

REPUBLIC RESPONDENT

JUDGMENT OF THE COURT

The appellant was convicted by the Senior Resident Magistrate, Nakuru of two offences namely, robbery with violence contrary to Section 296 (2) of the Penal Code and attempted robbery of the car with violence contrary to Section 297 (2) of the Penal Code and sentenced to death as authorised by law. He appealed to the superior court. The superior court allowed the appeal in respect of conviction for the offence of attempted robbery of the car but dismissed the appeal against the conviction for the offence of robbery. He now appeals to this Court on several grounds. The appellant was alleged to have robbed one Isaac Njuguna Mwangi of cash Shs.3,120/- and immediately before or after the time of such robbery used actual violence against the complainant.

The complainant was on the material day driving his motor vehicle registration number KWJ 030 Datsun pickup along Nairobi/Nakuru Road. He was stopped by two people at the junction of Limuru/Narok Road who asked for a lift to Naivasha. He agreed to give them a lift. One person sat at the back while the second person whom he identified as the appellant at the trial, sat in the front with the complainant. Shortly before reaching Naivasha, the appellant asked the complainant to stop so that he could alight. The complainant refused to stop because it was not a safe place to stop. The appellant then ordered the complainant to stop and threatened to kill him if he did not stop the motor vehicle. The appellant then got hold of the steering wheel and started hitting the complainant with his fists while demanding money. The complainant then stopped the vehicle. The appellant removed a sharp object and stabbed the complainant on the forehead and on the neck. The appellant demanded money and the complainant removed Shs.3,120/- from his pocket and gave the money to the appellant. The appellant then took a wheel spanner and ordered the complainant to come out of the vehicle. The appellant then came out of the vehicle and ran away. The complainant went to report at Naivasha Police Station. This was about 4pm.

Meanwhile, Joyce Wanjiku Njuguna who lives near the scene and who had gone to the scene after hearing the complainant's screams also screamed and people came to the scene. The people followed the direction the appellant had taken and pursued the appellant. They surrounded a small bush where the appellant was hiding and arrested him. He was handed over to the police on traffic duties who in turn took him to Naivasha Police Station. The complainant identified the appellant at the police station as the appellant was still wearing the same clothes – a pair of jeans, a black dirty leather jacket and a pair of

white shoes. The appellant was searched and Shs.3,120/- was recovered and some of the notes had blood stains which were later found to be that of the blood group of the complainant. The complainant explained that his hands got blood stains from the bleeding face when he removed the money from his pockets and handed it over to the appellant. Later, the appellant's identity card and a photograph were found in the complainant's vehicle.

The appellant denied the offence at the trial and explained that he had gone to the area to buy onions and was arrested on suspicion as he was a stranger in the area. He claimed that police had removed Shs.5,620/- from his pockets which was his money.

The learned trial magistrate was satisfied that the appellant was identified by the complainant and Joyce Wanjiku Njuguna; that Shs.3,120/- some of which was blood stained belonged to the complainant and was recovered from the appellant and that the appellant's identity card and photograph were later found in the complainant's motor vehicle. The learned trial magistrate said in part: "I find that the complainant was with the accused for a very long time from the time he boarded the vehicle upto the time he started attacking the complainant while still inside the vehicle. I find that this was ample time within which PW1 could see the accused including the clothes he was wearing. ... I find that this offence was committed in broad daylight and nothing could have prevented PW1 to identify the accused. I find that complainant positively identified the accused as the person who robbed him. ..."

Later in the judgment, the learned trial magistrate proceeded thus: "Evidence of PW1 is corroborated. PW1 said he was robbed KShs.3,120/-. The same money was recovered from the accused and he had no other money. The accused in his defence said that he had KShs.5,620/-. He did not say where the other money not recovered on him went. I find that he was not telling the truth. I find that the money recovered from him is the same money he had robbed the complainant. "

The superior court re-evaluated the evidence and reached the same findings of fact as the trial court except that it did not uphold the conviction for the offence of attempted robbery of the car.

We have considered the grounds of appeal and the submissions of the counsel. The prosecution case depended on factual evidence which the two courts below considered and believed. This Court as a second appellate court is not entitled to disturb those findings of fact unless on the grounds recognised by law, such as, material misdirection or non-direction or where there is no evidence to support such finding such that no reasonable tribunal directing itself properly could have reached that conclusion.

This appeal does not raise any point of law and we are satisfied that there was overwhelming evidence to support the findings of facts by the two courts below and that the appellant was properly convicted.

We find no merit in this appeal. It is dismissed.

Dated and delivered at Nakuru this 24th day of September, 2004.

E. M. GITHINJI -----

JUDGE OF APPEAL

J. W. ONYANGO OTIENO -----

AG. JUDGE OF APPEAL

W. S. DEVERELL -----

AG. JUDGE OF APPEAL

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

DEPUTY REGISTRAR