



REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT MOMBASA
(CORAM: KWACH, TUNOI & SHAH, J.J.A.)
CRIMINAL APPEAL NO. 49 OF 2000

BETWEEN

**JOHN MWANGANGI
KAMILI**
APPELLANT

AND

REPUBLIC
..... RESPONDENT

**(Appeal from a judgment of the High Court of Kenya at
Mombasa (Waki, J. & Commissioner Tutui) dated 25th
October, 1999
in
H.C.C.R.A. NO. 83 OF 1998)

JUDGMENT OF THE COURT

John Mwangangi Kimuli (the appellant) was tried and convicted by the Senior Resident Magistrate, Mombasa, on a charge containing two counts. On the first count he was charged with robbery with violence contrary to section 296(2) of the Penal Code. It was alleged that on 1st November, 1996 at about 9:40 p.m. along Links Road, Nyali Estate, Mombasa, jointly with others not before the court, the appellant robbed Amir Verjee of a motor vehicle No. KAG 540X valued at Shs.600,000/=, Shs.3,000/= in cash, an identity card and a Driving Licence and at or immediately before or after the said robbery threatened to use violence and did use violence by firing a gun at the said Amir Verjee. The charge in the second count was being in possession of a firearm without a certificate contrary to section 4(2)(b) of the Firearms Act. On the firearm charge he was sent to prison for two years.

The prosecution's case was that Amir Verjee and his wife left their house in Tudor in their car to attend a wedding at the house of a Mr. Kosla on Links Road in Nyali Estate, Mombasa. The wife was driving and Mr. Verjee sat on the front passenger seat. Just as Mrs. Verjee was parking the car outside the Kosla home and before she could switch off the engine, they were accosted by two armed thugs each on either side of the car. Mr. Verjee had the presence of mind to sense that there was trouble and instructed his wife to leave the key in the ignition with the engine running as she got out. The wife complied but as she got out she was pushed by one of the thugs and ordered to sit down, which she did.

As Mr. Verjee was getting out of the car, the second thug placed a gun on his head and ordered him to produce money. He had Shs. 3,000/= in cash in his purse and he surrendered both to the robber. He was then ordered to stand near the fence. His wife managed to escape by crawling between other vehicles which were parked at the scene and made it to the house and reported that her husband was being held outside at gun-point by robbers. Among the guests a Kenya Police Reservist named Nahid Musa (Musa). Musa had a gun. He went out immediately and confronted the thugs who shot at him several times. He returned fire aiming at the direction from which the thugs were shooting. One of these shots got the appellant on the back injuring him to such an extent that he was unable to escape with the other robbers who drove off at high speed when they were engaged by Musa. It turned out that it was the appellant who was firing at Musa and when he ran out of ammunition he hid behind a tree where he was found still holding his gun. He was arrested and turned over to the regular police at Nyali Police Station.

The appellant denied being involved in the robbery claiming that he was just passing by on his way home when he got caught in the skirmish. The appellant's denial notwithstanding he also made a statement under inquiry to the police in which he admitted his participation in the robbery.

In the statement the appellant said in part-

"I remember on 1st November, 1996 at about 6:30 p.m. my friend Wamaria Kamama, Muindi and Gacheru met me at Bara Bakarani Stage. They were driving a vehicle KAE 475P which was being driven by Gacheru. When we met and after discussing with them they told me to join them to look for a vehicle for sale as they had an order. I got into the vehicle and drove to Kajoni, Majengo, Kibokoni and last we came to Nyali. On reaching at Links Road we found so many vehicles parked on both sides of the road. We saw a vehicle which was with an Asian woman. We alighted from motor vehicle KAE 475P and started to rob the Asian woman of her vehicle KA G 540X. As we were in the process of robbing her I was shot in the back and I fell on the ground. I had a pistol and I fired 3 bullets. My friends managed to escape with the vehicle KAG 540X. When I was shot I was unable to walk and the police officers arrested me and took my pistol. I was taken to Nyali Police Station."

That confession leaves no room at all for doubt that the appellant was an active participant in the robbery. The gang was part of a larger gang operating in Mombasa with connections as far afield as Uganda. In the face of this overwhelming evidence it does not really matter and it makes no difference that the police did not dust the gun for fingerprints. The appellant was caught red-handed. He was arrested at the scene of crime. In these circumstances the confession cannot be but true. The conviction of the appellant on both counts was fully justified.

In the result this appeal fails and it is dismissed.

Dated and delivered at Mombasa this 17th day of January, 2001.

R. O. KWACH

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JUDGE OF APPEAL

P. K. TUNOI

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JUDGE OF APPEAL

A. B. SHAH

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR