



IN THE COURT OF APPEAL

AT KISUMU

(CORAM: PLATT, GACHUHI, & APALOO, JJ.A.)

CRIMINAL APPEAL NO. 24 OF 1987

BETWEEN

GEORGE OBEWAAPPELLANT

AND

REPUBLICRESPONDENT

(Appeal from a Judgment of the High Court of Kenya at Kisumu,

(Mr. Justice Porter) dated 29th September, 1985

in

Criminal Appeal No. 107 of 1985)

JUDGMENT OF THE COURT

The appellant appeals against the judgment of the High Court which on September 27, 1985, affirmed his conviction and one other person of robbery with violence contrary to section 296(1) of the Penal Code.

The facts are fairly straightforward. The appellant and his confederate were both Administrative Police Officers. On January 6, 1985, they were admittedly involved in an accident along the Otieno Oyoo Street in Kisumu. The prosecution claimed that they had robbed one John Bwana Opundo of cash Kshs 6000.

According to the prosecution, the complainant arrived from Bondo with a view to do some shopping in Kisumu. He has a shop there. While he was walking along the street at sometime between 10.00 and 11.00 am, he met someone who got hold of his shirt and a 20 shilling note were torn. A third person who was obviously with the gang, held a pistol which was pointed at him.

As was to be expected, Opundo raised an alarm and shouted for help. Some public-spirited persons came to his aid but the person who snatched the money escaped. The two other robbers were arrested. One of these two also succeeded in making his escape. So only one was taken to the police station. About an hour and half or so later, the appellant also called at the police station. And reported that he and another A P had arrested his companion but that he succeeded in escaping. He had come to report

the matter to the police, apparently to obtain their assistance to free his companion. As the police were already *aut fait* with the facts, he was also immediately apprehended. Both were accordingly brought before the court.

The present appellant was identified as the person who carried the pistol and the second robber who escaped. The appellant's story was that although he was at the scene, they in fact arrested a person in unlawful possession of gold. They had a tip off from a small boy about this. While, they were taking the person to the police station, he ran away and brought a number of people who fought with them. The appellant said, as he was getting the worse of the fight, he himself escaped and sometime later reported this matter to the police only to be apprehended as one of the robbers.

So, the only question before the learned magistrate was, which of these two contradictory stories was true. He held that the prosecution's version of the matter was the side of truth and that the appellant and his confederates indeed robbed the complainant of his money. Both appealed against their convictions and sentences to the High Court. The learned judge having independently considered the matter, also reached the same conclusion as the trial magistrate. So on this matter, they were two concurrent findings of fact.

The appellant brought this second appeal to the court and argued that on the facts he was wrongly convicted.

There is no question of identification. The appellant admitted that he took part in the fracas and escaped to gobtained police assistance. So which of the two versions of the facts is correct, is a matter peculiarly within the province of the trial magistrate. In a fully considered and well – reasoned judgment, he accepted the prosecution version as true, it was not suggested that he misdirected himself or misapprehended any point of law.

The learned judge of the High Court also applied his mind *de novo* to the facts and the law and came to exactly the same conclusion. Nothing said by the appellant satisfied us that these two concurrent findings were wrong. On the contrary, we think they are fully justified by the evidence.

We think therefore that there is no merit in this appeal. It ought to be and is accordingly dismissed.

Dated and delivered at Kisumu this 23rd day of December, 1987.

H. G. PLATT

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JUDGE OF APPEAL

J. M. GACHUHI

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JUDGE OF APPEAL

F. K. APALOO

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JUDGE OF APPEAL

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