



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MAKUENI

HCCRA NO. 127 OF 2017

MILTON TOROITICH POGHON.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

1. The accused **MILTON TOROITICH POGHON** was charged with offence of robbery contrary to Section 296 (1) of the Penal Code, Chapter 63 Laws of Kenya.

2. The particulars are that on 3rd September 2013 along Nairobi – Mombasa Highway at Ikoyo stage, in Kiboko Location within Makueni County, jointly with others not before court while armed with crude weapons namely Pangas, robbed **FRANCIS KIIO KINGOLA** of one motor vehicle make Toyota Rav. 4 Chasis No. ACA 21-001203, one Tecno mobile phone, a pair of shoes, two T-shirts, one long trouser, and cash Kshs. 8,000/= all to a total value of Kshs. 1,314,280/=, the property of M/S **MTUDAWA FREIGHTERS LTD**, and at or immediately before or immediately after such robbery, threatened to use actual violence to the said **FRANCIS KIIO KINGOLA**.

3. The Appellant pleaded not guilty and the matter came to trial. He was convicted and sentenced to 5 years imprisonment.

4. Being aggrieved with the above decision, he filed an appeal via petition which he amended later as follows:-

AMENDED GROUNDS OF APPEAL

i. THAT the learned trial court erred in fact and in law by shifting the burden of proof from the prosecution to the accused herein the petitioner.

ii. THAT the learned trial magistrate erred in law by failing to appreciate that the case Robbery is beyond hr jurisdiction as enshrined in section 7 (b) of the CPC Cap 75 laws of Kenya.

iii. THAT the learned trial magistrate did not consider the plausible, submission, defence of the petitioner.

iv. THAT the learned trial Magistrate erred in fact and law by laundering the evidence that was never part and parcel of dispute with no first report and never put to test.

v. THAT the trial Magistrate failed to be faithful to the law and appreciate the inconsistencies and contradictions in the prosecution evidence and went ahead to give an opinionated judgment and conviction.

vi. THAT the learned Magistrate failed to appreciate that uncorroborated evidence is not reliable whatsoever.

vii. THAT the prosecution did not avail to court essential and crucial witnesses and exhibits.

viii. THAT the trial Magistrate failed to be cautious and relied upon single evidence to crucify the petitioner.

ix. THAT the case was marred with yawning gaps and Lakunas.

5. When matter came for hearing, the parties agreed to canvas appeal via submissions.

6. The appellant filed and served same but prosecution of rendered oral submissions.

APPELLANT SUBMISSIONS

7. The appellant submitted that, the trial magistrate that did not have legal jurisdiction to preside over the case as his/her designation (Resident magistrate) cannot hear such cases. As clearly enshrined in the CPC Cap 75 Section 7 (1b), this renders the court process null and void “ab initio”.

8. The trial was marred by yawning gaps, lacunas, inconsistencies and uncorroborated evidence in giving his testimony PW1 narrated how he took off from Mombasa heading for Kampala and how he was approached by someone at Voi stage where he had stopped to buy nuts and mineral water whom he carried at a fee of Kshs. 500/=.

9. The passenger paid and alighted at Ikoyo stage at dusk (7.00 p.m.).

10. After the passenger left, he decided to relieve himself and that is when he was invaded by the passenger amongst others. It was his evidence that one of the invaders who is the accused having had a “green Kabuti”.

11. In paragraph 2 and 3 of page 12 of the proceedings, during cross-examination the same witness could not clearly give to the picture of the accused since he stated that the accused now looked darker than before.

12. Owing to the fact that the accused was not arrested with the green Kabuti PW1 alleged that he wore on that material date of the alleged offence and that at the identification in court; he seemed darker than before (see paragraph 3, 2nd last line). This creates a sense of doubt to the truth of the identification of the accused.

13. PW1’s evidence was not corroborated, thus unsafe to rely on the same as a basis for his conviction. Pages 12 last line pw1 testified “**I did not lead to your arrest because I did not know you before but at the parade, I saw you and remembered you**”. As per the above extract, it is submitted that the identification done by PW1 did not reach the required standard of proof. In the High Court **CR APP NO. 26 OF 2007 JOSEPH MUSYOKI –VS- REPUBLIC HELD AT MACHAKOS BY ASIKE MAKHANDIA JUDGE and GEORGE DULU**, judgement delivered on 25/10/2012 there was non-compliance to the provisions to section 169(1) of the CPC by the trial magistrate and it was held;

“The appellant has stated in his appeal that his sworn defence was not given proper consideration by the trial court. That it was rejected without sound reasons contrary to section 169(1) of the Criminal Procedure Code (Cap 75). We agree that the learned trial magistrate did not bring out the defence of the appellant and weigh it against the prosecution case.”

14. The above sentiment applies equally to the present case thus Court is urged to arrive at the conclusion that the trial magistrate directed herself by failing to weigh the evidence of his defence as against the prosecution’s evidence.

GROUND 4

15. It is submitted that it was trite law for the trial magistrate to act on a disputed case with a first report. This instance had no OB No. and is a breach of natural justice.

16. This in turn rendered the charge sheet fatally defective and amorphous as the petitioner herein was left to chase a mirage and could not defend himself extensively without the OB extract.

GROUND 1 & 3 MERGED

17. It is submitted that the trial magistrate shifted the burden of proof from the prosecution to the accused and did not consider the plausible submissions and defense of the petitioner as per the provisions of the law.

GROUND 7 & 8 MERGED

18. The prosecution did not avail crucial witnesses and exhibits namely the investigation officer, and the officer who conducted the parade. Documents of import, clearance, payment of taxes to KRA and customs, parade memo signed by the petitioner and the parade officer.

19. The trial failed to find that both pw1 and appellant were put in the same cells together prior to parade.

AUTHORITIES & SECTIONS & ARTICLES OF LAW TO SUPPORT MY CASE

20. **REPUBLIC –VS- KIPKERING ARAP KOSKE & ANOR 16 EACA 135** where it was held that;

“In order to justify the inference of guilt the inculpatory facts MUST be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis that of his guilt.”

There is however no room for such presumption in a criminal case.

21. **JEREMIAH OPICHO & OTHERS –VS- REPUBLIC H.C. CRA NO. 307-309 OF 1989 AT NRB** where it was held that despite claims made by the complainant PW1 and his uncorroborated testimony that he was able to see and recognize the appellant we are surprised that the means do not appear in the OB where the incident was first reported.

22. **KENNEDY OCHIENG ARONGO & ANOR –VS- REPUBLIC (2008) EKLR** the court held that;

“It is trite law that where the evidence to implicate an accused person is entirely based on identification, such evidence should be absolutely water tight to justify a conviction and must be free from any possibility of error.”

23. **SECTION 111 OF THE EVIDENCE ACT CAP 80** the legal burden of proof rests with the prosecution. The onus of proof never shifts to the accused.

24. **BERNARD KIPROTICH KAMAMA –VS- REPUBLIC C.A. (ELDORET) 123/2010 (2013) EKLR.** However, the intricate web of the alleged offence called for more details and thorough investigations by the police. Vital exhibits and witnesses not available adduced or produced, too many loose ends left hanging. Also seen in **Kanyi Kimondo’s (Justice) 19th May 2015 Eldoret High Court Judgment on Joseph Ochieng Ajwang –vs- Republic C.A. 76/2012.**

RESPONDENTS SUBMISSIONS

25. The offence is robbery contrary to section 296(1) Penal Code. He is alleged to have robbed items vide charge sheet. PW1 lifted Appellant at Voi to Makindu between afternoon then to Ikoyo area up to 7.00 p.m.

26. They were together for 4 hours. When he alighted in Ikoyo between 7.00 p.m. - 8.00 p.m., the Appellant and 2 other passengers attacked PW1. They took charge of motor vehicle and damped PW1 at Kari in a hole and left him there. He managed to rescue himself and went to Kiboko.

27. The officers at Kiboko locked him up. He gave police information of who carjackers were. The information was circulated.

28. The police officers at Emali summoned the Appellant. Appellant was a prison warder Machakos G.K. prison. He presented himself at Emali police station and he was arrested.

29. He was informed that he stole a motor vehicle. PW1 who had been locked up for 2 nights was taken to Emali police station and he identified Appellant. A parade was conducted and picked Appellant.

30. There was no doubt as to who stole motor vehicle. The clothes attackers were wearing were identified. The Appellant was armed with Rungu. The description was given. The identification was free from error.

31. Appellant was known to the police officers. He had a series of robbery cases. PW2 a police officer at Emali police station got information Appellant was in Emali town thus police called him to police station. The motor vehicle was never recovered.

32. The matter was heard by Resident Magistrate court. He was convicted on simple robbery by Resident Magistrate. It is not fatal for Resident Magistrate to hear the case.

33. Appellant gave unsworn defence. Only 3 witnesses were called. PW1 had carried passengers. The car had 3 attackers and the driver. The informer information and PW1 led to arrest of Appellant. The Appellant was put at scene of crime.

34. The duty of a first appellate Court as aptly put in the case of **OKENO V. REPUBLIC (1972) E.A. 32** is to scrutinize the evidence on record, make it’s own findings and draw it’s own conclusions giving due allowance to the fact that the trial Court had the advantage of seeing and hearing the witnesses.

EVIDENCE ADDUCED

35. PW1 was Francis Kiio Kingola who informed the court that on 03/09/2013 at 3.00 p.m., he was on the road to Kampala from Mombasa driving a Rav 4 which chasis number he could not remember. He indicated that he drove up to Voi and arrived there at about 5.00 p.m. to 6.00 p.m. He then carried a person whose name he did not know.

36. They proceeded on until Makindu town and at Makindu town they stopped as the said person requested to relieve himself. Upon returning to the vehicle the witness stated that the said person told him to drop him off at Ikoyo because that was where he was headed and did not know the place well.

37. The witness stated that the said person told him that he was going to see his brother. They got to Ikoyo at about 7.00 p.m. to 8.00 p.m. and he stopped at the stage and told the person that he had reached. The said person paid him and he alighted.

38. It was the witness testimony that he also decided to alight and relieve himself as he waited for his other colleagues behind him. He indicated that when he alighted the said person he had carried and two other people attached him and put him at the back seat and covered him with a jacket.

39. They drove off and dumped him in the forest in KARI. He indicated that they left him in a hole. He informed the court that they stole his money, shoes, and everything else and left with the car. He struggled to get out of the hole and walked to Kiboko Police Station at about 1.00 a.m. and made a report.
40. He was however locked in and in the morning taken to Makindu Police Station. He was later charged in court after 2 days for stealing the vehicle and was released on bond.
41. He was later informed that there was a man arrested at Emali town and went to Emali police station and asked to identify him. An ID parade was done and he identified the said as amongst the ones who had attacked him. He identified the said man as the accused person before the court.
42. In cross examination the witness stated that the chasis number of the vehicle was as stated in the charge sheet. He stated that he left Mombasa at about 3.00 p.m. He indicated that they left Mombasa in a convoy and their leader was Alexander Kituku whom he stated his role was to follow them assist in the event of a problem.
43. The witness stated that he did not communicate to the said Alexander until the vehicle was stolen. He indicated that they took the vehicles from the port the previous day and on the material day they fuelled and left all together at 3.00 p.m.
44. He stated that if he had indicated that they were 9 drivers in his statements it means 9 vehicles had been cleared. He stated that he was the 3rd last driver when they got to Voi. He stopped at Caltex Voi and bought water and nuts and then someone approached him and asked to be carried and they agreed on a figure of Kshs. 500/=.
45. He however indicated that they are not allowed to carry people. He stated that the vehicle had a seating capacity of 4 people and he could have carried more people but he did not. He however stated that he carried an old man at Mtitu Andei and had recorded that in his statement though he did not inform the court.
46. He stated that he dropped off the old man in Makindu at the mosque near Wote Road and then the person he had carried from Voi alighted and went for a short call and came back.
47. At Ikoyo the said man gave him Kshs. 500/= and alighted. He stated that the shops were open however there are at a distance on the right side of the road as you face Nairobi direction. He indicated that he had stopped on the left side of the road and there are no shops there.
48. He indicated that the said people attacked him when he was about to alight and began to beat him. He indicated that he was about to relieve himself near the door when they attacked him.
49. It was his testimony that he got shocked and sated that there were vehicles on the highway passing which ad their lights on therefore he could see the people who attacked him.
50. He however stated that the incident happened so fast. While there his colleague Christopher Muange passed him and hooted but did not stop.
51. He indicated that when he carried the said person at Voi nobody saw him because although they had left Mombasa together they were not following each other closely. He stated that the person he carried at Voi was wearing a blue jeans jacket, was of medium height and chocolate skin not light or dark.
52. The witness stated that Ikoyo the person who hit his door had a green "kabuti" and indicated that the said person was the accused person. He indicated that he hit him with a rungu and others joined in and hit him on hit him on the head. It was his testimony that he was unable to shout because he was being strangled.
53. He indicated that he identified the accused person by his height, skin colour and eyes and the "kabuti" he had on. He indicated that he could not estimate the accused person's height. The witness stated that the other person in the company of the accused person was short but he could not make out his face since he was far but he identified the accused person because he was close to him.
54. He denied recording in his statement that the tall one was dark brown and stated that to him he was dark. He indicated that the accused person looked darker than then. At the parade he stated that he identified the accused person as the dark one. He stated that the people in the parade were a mix of tall, short, dark, light people.
55. He indicated that he did not know that there were photographs of the accused person at the station before he identified him. He stated that he could not remember the number of people in the parade and when the parade was done. He indicated that he did not find the accused was anything that belonged to him upon his arrest.
56. He denied causing the arrest of the accused person because he did not know him before. He however saw him at the parade and remembered him. He denied being shown a picture of the accused person before the parade. He stated that his case was withdrawn after he identified the accused person but denied accusing the accused person falsely.
57. PW2 was Mathew Matoto who informed the court that on 03/09/2013 he was in Makindu police station where he had gone to record a statement in regard to a driver that he had given a motor vehicle on 02/09/2013 and had been carjacked at Ikoyo.

58. He indicated that the vehicle was a Rav 4 but he could not remember its registration. He stated that it was headed to Kampala to its owner upon clearance. It was his testimony that the vehicle was never recovered but he learnt that the driver was able to identify one of the people who attached him.

59. PW3 was sergeant Daniel Kipruto attached at Emali police station. He testified that on 08/10/2013 at 10.00 a.m., he was at the station together with the OCS Chief Inspector Gathigo and PC Antony Maina when the OCS received a call from his informer informing him that the suspect herein Milton Toroitich had been seen at a hotel within Emali Township.

60. They immediately rushed to the scene and with PC Antony Maina they entered into the hotel and left the OCS outside. They then arrested the accused person herein and he was charged with the offence of preparation to commit a felony. They later learnt that he was wanted by the CID Makindu.

61. In cross examination the witness stated that he arrested the accused person in regard to another case. He indicated that the informer was not a witness because they are not allowed to disclose informers.

62. The prosecution closed their case and the accused was put to his defence whereby he opted to give an unsworn statement and had no witnesses to call.

63. He stated that he was called by the OCS Emali who told him to go to the station. He went and upon arrival he was arrested. He indicated that he was informed that someone had alleged that he had stolen their vehicle and they wanted to do an identification parade.

64. He indicated that one Francis Kingola who alleged that he had stolen his vehicle was in the cells with him. He was later released. At about 3.00 p.m. all the people in the cells were taken out for the parade. They did several parades and in the case involving the vehicle Francis Kingola identified him. Upon his identification he was brought to court on three counts, two robberies and one preparation to commit a felony.

65. The accused person informed the court that Francis testimony in court was contradictory to what he had recorded in his statement. He indicated that Francis admitted that he lied to the court but not too much. It was the accused person's testimony that he learnt about this case while at the police station.

66. He stated that even the arresting officer indicated that he arrested him due to another case. He was of the view that crucial witnesses such as the officer who conducted the identification parade and the IO did not testify.

67. He indicated that he opined that the parade was conducted unfairly noting that the alleged complainant was also in the cells with him. Further he indicated that the inmates who were removed were of different height, sizes and complexion.

68. It was the accused person's testimony that on the day it is alleged he robbed the complainant he was on night duty as that was in 2012 and that he had given a copy of his work register to the investigating officer in prove of the same. He therefore denied committing the offence.

ISSUES, ANALYSIS & DETERMINATION

69. The court has analysed the evidence adduced by the prosecution and the defence and finds that the issues for determination are whether;

i) There was proper identification of the accused person?

ii) The ID parade conducted fairly and procedurally?

iii) There is sufficient evidence linking the accused person to the offence charged?

70. PW1 who was the prosecution's main witness gave a detailed account of what transpired on the material date 03/09/2013 when he was allegedly attached and the vehicle he was driving and his belongings stolen.

71. He indicated that he was headed to Kampala from Mombasa and at Voi he carried a person unknown to him and they agreed on charges of Kshs. 500/=.

72. The said witness stated that the said person requested him to drop him off at Ikoyo and when they got to Ikoyo stage he told the person that they had reached as the said person alleged that he did not know the place.

73. The said person paid him and alighted. PW1 indicated that he decided to relieve himself and just as he was about to do so, he was attached by the person he had carried and two other people.

74. He informed the court that one of them was wearing a green "kabuti" and was tall and dark and was the one who attached him first and that he had a rungu. He indicated that the said person was the accused person herein.

75. It was his testimony that he was able to see him because he was the closest to him amongst the three and there were also vehicles passing on the highway with their lights on. He indicated that he thereafter identified him at the identification parade and remembered him and identified him as the dark one.

76. **In the Court of Appeal at Nairobi Criminal Appeal No. 140 of 2000 Peter Mwangi Mungia –vs- Republic** upheld the reasoning in the Court of Appeal in England in **R. –vs- Turnbull [1976]3 ALL ER 549** saw the examination. The judge ...examines closely the circumstances in which the identification by each witness came to be made.

77. How long did the witness have the accused under observation? At what distance? In what light? Was the observation impeded in any way, e.g. by passing traffic or a press of people? Had the witness ever seen the accused before? How often? If only occasionally, had he any special reason for remembering the accused? How long elapsed between the original observation and the subsequent identification to the police?

78. Was there any material discrepancy between the description of the accused given to the police by the witness when first seen by him and the accused person's actual appearance?"

79. The court being duly guided by the above referenced authority observed the witness evidence on identification was that there was presence of light when he was attached because he had parked at the stage and there were vehicles passing by on the highway with lights on.

80. He further indicated that the accused person was the one who attacked him first and/or he was leading the rest and therefore he was closest to him and he therefore saw him. Though the witness admitted that the incident happened so fast and that he was shocked when he was attacked, the court observed that he was able to describe the person who attacked as having been tall and dark and was wearing a "kabuti".

81. Though there was no corroboration of PW1 evidence as to the circumstances that led to his attach, the court opined that his evidence was quite detailed and in spite of a thorough cross examination by the accused person, PW1 evidence remained unshaken.

82. **In the Court of Appeal at Nairobi Criminal Appeal No. 140 of 2000 Peter Mwangi Mungai –vs- Republic** upheld the reasoning in **Owen Kimotho Kiarie –vs- Republic Cr. Appeal No. 93 of 1983**, (unreported) this court held that dock identification of a suspect is worthless unless it is preceded by a properly conducted identification parade.

83. The principle was re-echoed in the case of **Charles O. Maitanyi -vs- Republic [1985] 2 KAR 75**. In that case it was also held that even where the dock identification is preceded by a properly conducted identification parade the evidence of a single identifying witness must be tested with the greatest care before a conviction is entered.

84. In the Court of Appeal at Nyeri Criminal Appeal No. 63 of 2014 between **John Mwangi Kamau –vs- Republic** upheld its reasoning in **Nathan Kamau Mugwe –vs- Republic Criminal Appeal No. 63 of 2008** this court faced with a similar situation expressed itself as follows:-

“As to the complaint in ground six that the witnesses had not given to the police the description of the appellant before the parade, we do not think that failure to describe the person to be identified necessarily renders an otherwise valid parade worthless. Even in GABRIEL’s case, supra, the court did not go so far as to say that a witness must be asked to give a description of the person to be put on the parade for identification. All the court said was that the witness ‘SHOULD’ be asked. That is obviously a sensible approach. It is not impossible to have a situation in which a witness can tell the police that though he cannot give a description of the person he had seen during the commission of an offence, yet if he (witness) saw that person again, he would be able to identify him. It would be wrong to deprive such a witness of an opportunity of a properly conducted parade to see if he can identify the person. Again, the police themselves may, through their own investigations, come to know that a particular suspect may have been involved in a particular crime though the witness or witnesses to that crime have not given a description of the suspect. Once again it would be wrong to deny the police the opportunity to put such a suspect on a parade to see if the witnesses can identify him. In either of the two cases, the parade cannot be held to have been invalid merely because the witnesses had not previously given a description of the suspect. The relevant consideration would be the weight to put on the evidence regarding the identification parade. We reject the contention that because James had not given to the police a description of the appellant, his evidence with regard to the identification parade ought to have been rejected.”

85. As regards the identification parade and having considered the reasoning in the authorities above stated, PW1 stated that there were people of different height, complexion and sizes in the parade and he identified the accused person as the dark one.

86. It is notable that the officer who conducted the ID parade did not testify in court and could have probably shed light as to what measures he undertook in carrying out the parade.

87. The accused person in his defence was of the view that the same was done unfairly because people on the line up were of different sizes, complexion and height. He indicated that PW1 was with him in the cells before the parade was done and thereafter released.

88. PW1 on the other hand indicated that he was summoned to the police station for the parade and did not see the accused person before the parade and/or was not shown his picture. PW1 stated that he was arrested after reporting about the stolen vehicle and was charged in court and later released on bond.

89. On the other hand PW3 stated that they arrested the accused person herein on 08/10/2013 on account of a different case and later learnt that he was wanted by the CID in Makindu for the case herein.

90. It was therefore unclear what the accused person meant when he said that they were together in the cells yet from the evidence adduced it is notable that PW1 had been locked in the cell about a month earlier before the accused person's arrest.

91. It is further notable that the accused person was arrested and locked up at Emali police station whereas PW1 stated that he was locked up at Kiboko police post and then taken to Makindu police station which are clearly separate police station.

92. Noting the IO did not testify the court was not informed of the investigations that were done that linked the accused person to the offence warranting them to summon PW1 to an identification parade.

93. There was also no evidence adduced as to how the identification parade was conducted. PW1 did not inform the court whether he had given the police the description of the people who attacked him.

94. Nonetheless PW1 stated that he was able to remember the accused person as one of his attackers at the identification parade mainly due to his complexion and height.

95. From the foregoing and from the evidence adduced the court notes that PW1 was the only witness who testified in this case and linked the accused person to the offence and therefore his evidence remained uncorroborated as to the identification of the accused person.

96. In **John Mwangi Kamau -vs- Republic (2014) eKLR**, it was the holding of the Court of Appeal that identification parades are meant to test the correctness of a witness's identification of a suspect.

97. In **David Mwita Wanja & 2 others -vs- Republic- Criminal Appeal No. 117 of 2005**, the Court of Appeal sitting in Nairobi made the following observations;

“The purpose for, and the manner in which, identification parades ought to be conducted have been the subject matter of many decisions of this court over the years and it is worrying that officers who are charged with the task of criminal investigations do not appear to get it right. As long ago as 1936, the predecessor of this Court emphasized that the value of identification as evidence would depreciate considerably unless an identification parade was held with scrupulous fairness and in accordance with the instructions contained in Police Force Standing Orders”

98. **Police Form 156** which is designed pursuant to Force Standing Orders issued by the Commissioner of Police under **section 5 of the Police Act Chapter 5 Laws of Kenya** and which is invariably used in the conduct of identification parades expressly provides for 16 or so requirements which ought to be observed. The relevant sections in this case are Standing Order 6(iv) (h) and (n) which state as follows:

“6. (iv) Whenever it is necessary that a witness be asked to identify an accused/suspected person, the following procedure must be followed in detail;

(h) If the witness desires to see the accused/suspected person walk, hear him speak, see him with his hat off, this should be done, but in this event the whole parade should be asked to do likewise.

(n) The parade must be conducted with scrupulous fairness, otherwise the value of the identification as evidence will be lessened or nullified.

99. My interpretation of **Order 6(iv) (h)** is that everything in the parade should be done as uniformly as possible.

100. Though the trial court claimed to have duly warned itself of the dangers of relying on uncorroborated evidence however the court failed to observe that there were serious shortfalls in the elements of investigations, identification and the alleged parade conducted.

101. The IO was not called to testify on what investigations were done to connect appellant with the offence. The parade officer never testified nor parade forms produced to shed light on the discredited and disputed parade. ‘The guidelines set out by Force Standing Orders supra were not adhered to.

102. In sum the evidence on identification and the conduct of the parade thereof leave a lot to be desired thus leads this court to inescapable conclusion that the conviction was unsafe.

103. The court thus allows appeal and quashes conviction, and sets appellant at liberty unless otherwise legally held.

SIGNED, DATED AND DELIVERED THIS 22ND DAY OF MAY, 2018 IN OPEN COURT.

C. KARIUKI

JUDGE

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