



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NYERI**  
**CRIMINAL APPEAL NO. 111 OF 2009**  
**CHARLES MAINA NGUNJIRI.....APPELLANT**  
**versus**  
**REPUBLIC.....RESPONDENT**

*(arising from the judgment of Hon. E.J. Osoro Senior Resident*

*Magistrate Nyeri in Criminal Case No. 4081 of 2007)*

**JUDGMENT**

1. The Appellant CHARLES MAINA NGUNJIRI was charged with the offence of robbery with violence contrary to section 296(2) of the Penal Code the particulars of which were that on 15th October 2007 at Nyeri Township Nyeri District Central Province jointly with others not before the court being armed with dangerous weapons namely pistols and knives robbed CHARLES IRUNGU GITUBA cash Ksh. 12,500 one mobile make Siemen C 55, one wrist watch make Seiko five, one Mobile charger all valued at Ksh. 23,800 and at or immediately after the time of such robbery used actual violence to the said CHARLES IRUNGU GITUBA.
2. He pleaded not guilty, was tried and convicted and sentenced to death. Being aggrieved by the said conviction and sentence filed this appeal.
3. When the appeal came up for hearing before us, the appellant who was unrepresented filed supplementary grounds of appeal and written submission which he relied upon while Miss Kitoto appeared for the state and opposed the appeal on the ground that the appellant was identified by the complainant through recognition and was able to give the appellant name to P.W.3.
4. On behalf of the appellant it was submitted that the complainant reported to the police the following day hours after the alleged attack and that during the trial the complainant testified that he was attacked by a gang of people it was submitted that the complainant did not positively identify any of his attackers.
5. It was further submitted that the charge sheet was defective and the evidence tendered was at variance with the particulars of the charge.
6. This being a first appeal we are under duty to reevaluate the evidence tendered before the trial court and to come to our own conclusion. It was the evidence of P.W.1 Charles Irungu Gituba that on 15th October 2007 on his way home from work at 7.30 pm. he was attacked by a group of young men including one with missing four lower teeth called "Chali" who stabbed him with a knife before being

robbed of the items on the charge sheet. The following day he reported to Nyeri police station. When the police conducted identification parade the appellant declined to take part but the complainant was able to recognize him as he protested.

7. P.W.1 was able to identify the appellant in the dock and the trial court was able to confirm that some of his lower teeth were missing and under cross examination by the appellant he confirmed that he had known the appellant for about five years.

8. P.W.2 pc Ambrose Wambua testified that they got information from an informer on the appellant who was arrested with one roll of cannabis and handed him to the police station for further investigations. P.W.3 confirmed that the appellant whom they arrested was the one who had been described by the complainant. P.W.4 Ip Gerald Mwangi testified that he was instructed to conduct identification parade in respect of robbery with violence case and when the appellant saw the complainant he declined stating that the complainant had peeped and saw him.

9. When put on his defence the appellant gave a sworn statement and testified that he was framed up because of his four missing lower teeth and that the nickname Charlie was not his. He further stated that no item was recovered from him.

10. While convicting the appellant the trial court had this to say on the issue of whether the appellant was positively identified.

***“The electricity lights lighting the street are said to have been on. This court finds that the lighting was sufficient for positive identification.”***

She further noted that the appellant was identified on the basis of recognition and therefore the identification parade was not necessary.

11. We have therefore identified the following issues for determination:

***a. Whether the appellant was positively identified by the complainant.***

***b. Whether the prosecution case against the appellant was proved beyond reasonable doubt.***

12. From the evidence on record it is clear that the complainant was able to positively identify the appellant. He gave his description to the police which was confirmed by dock identification. He was also able to recognize the appellant at the identification parade even though the appellant refused to take part in the same. The evidence of the complainant as regards the appellant was consistent throughout. His evidence was reinforced by that of P.W.2 Ambrose Wambua who testified that the appellant was arrested as a result of information given by an informer and the conduct of the appellant when he was subjected to identification parade.

13. On the authority of WAMUNGA V R [1989] KLR 424 where the Court of Appeal at page 426 had this to say:

***“it is trite law that where the only evidence against a defendant is evidence of identification or recognition a trial court is enjoined to examine such evidence carefully and to be satisfied that the circumstances of identification were favourable and free from possibility of error before it can safely make it the basis of a conviction”***

We find that the recognition of the appellant was proper and the evidence tendered by the prosecution proved the case against the appellant beyond reasonable doubt.

14. We therefore find that the conviction of the appellant was safe and that the appeal lacks merit which we hereby dismiss.

Dated, signed and delivered at Nyeri this 19th day of September 2014.

J. WAKIAGA

JUDGE

J. NGAAH

JUDGE

Court: Judgment read in open court in the presence of the appellant and Miss Maundu for the state. The appellant has the right of appeal.

J. WAKIAGA

JUDGE

J. NGAAH

JUDGE