

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CRIMINAL APPEAL NO. 173 OF 2012

(Appeal against the judgment of [B. N. IRERI, SRM])

in the Principal Magistrate's Court at

Vihiga in Criminal Case No.392 of 2009)

RONALD HAMISI APPELLANT

V E R S U S

REPUBLIC RESPONDENT

J U D G M E N T

The appellant was charged with two counts of robbery contrary to **section 296(1)** of the **Penal Code**. The particulars for each count were:

COUNT 1: *On the 18th day of September 2008 at Lunza village, Mukingi sub-location, in Vihiga district , within Western Province, jointly with others not before court robbed **DAVID MADEGU ATONYA** of cash KShs.500/= and ID/card and at or immediately before or immediately after the time of such robbery used actual violence to the said **DAVID MADEGU ATONYA**.*

COUNT 2: *On the 18th day of September 2008 at [particulars withheld], in Vihiga district within Western Province jointly with others not before court robbed M K of cash KShs.3,000/= and at or immediately before or immediately after the time of such robbery used actual violence to the said **M K**.*

The appellant was convicted of each count and sentenced to serve 8 years' imprisonment. The appellant's grounds of appeal are that the identification was by recognition but the prevailing circumstances were not conducive for positive identification, no names or description of the appellant was given in the first report, there was no direct evidence that connected him to the crime and that his sworn defence was not considered. During the hearing of the appeal the appellant filed written submissions which have four paragraphs and mainly elaborate on the grounds of appeal. The appellant contends that the evidence on record was not credible and it is not clear whether PW2 lost KShs.5,000/= or 3,000/=. Mr. Okoth, State Counsel, opposed the appeal. He submitted that the prosecution evidence was corroborated and supports the conviction.

The record of the trial court shows that seven witnesses testified for the prosecution. **PW1, DAVID MADEGU ATONYA** was the complainant for charge in Count 1. His evidence is that on the 18.9.2008 at about 5.30 p.m. he was heading home. It was raining and he started running. He saw five young men who were also running in the same direction and he identified the appellant and another one by the name LUNDU. The appellant attacked him and ransacked his pockets. He took his ID card and KShs.500/=. He was not injured and the appellant and his colleagues ran away. He knew the appellant upto his home. **PW2, M K** was also heading home that evening when she saw 5 people coming from the river. She identified the appellant and the appellant attacked her. She fell and the appellant snatched her purse that contained KShs.5,000/=. The appellant tried to rape her but she screamed and he ran away. She knew the appellant.

PW3, SOLOMA ASAVA KEBEGE was on that material date 18.9.2008 heading home when he was by passed by some people. The sun was setting. He identified the appellant and one of them pushed him aside and fell down. He heard PW2 screaming and he also started screaming. The attackers ran away. **PW4, AGGREY MUDATI** was the assistant chief of Lyadyuwa sub-location. He got a report that PW1 had been attacked by the appellant. On the same date of 18.9.2008 PW2 also reported to him that she had been robbed KShs.3,000/= by the appellant. The appellant was arrested on the 19.3.2009 and later charged with the offence. **PW5, CAROLINE MUHATI** was a clinical officer at the Vihiga District hospital. She produced a P3 form for PW2 who complained of having been assaulted by a person known to her. **PW6, SOLOMON ASAVA** was heading home on the 18.9.2009 and saw PW2 ahead of him. He saw the appellant and three other people coming from behind and the appellant pushed him aside. It was not very dark and he identified the appellant as he knew him. He heard M screaming and he rushed there. PW2 informed him that she had been robbed of her money. **PW7, PC NAHASHON KIBOS** was based at the Chavakali Police patrol base. He investigated the case and testified that the appellant was taken to the police station on the 19.3.2009 by Administration Police officers from Lyadyuwa. He investigated the case and charged the appellant with two counts.

The appellant was put on his defence and in his sworn testimony stated that he comes from Lyadyuwa sub-location. He plucks tea in Kericho and did not commit the offence.

The evidence on record establishes that both PW1 and PW2 were robbed of their money on the 18.9.2008. The main issue for determination is whether it was the appellant who robbed them. According to the prosecution evidence the incident occurred at around 5.30 p.m. The witnesses knew the appellant. PW1 testified that he knows the appellant up to his home and he reported the matter to the area assistant chief PW4. PW2 was also robbed of her money and she was at the same area where PW1 was attacked. She knew the appellant. She too reported the matter to the area assistant chief. PW3 and PW6 were also heading home on the material day when they were pushed aside and saw the appellant robbing PW2. According to PW6 it was not dark and he could see the appellant very well.

The appellant in his defence stated that he works in Kericho. The prosecution evidence does establish that it is the appellant who robbed the two complainants. The incident occurred at about 5.30 p.m. and I do find that the conditions were conducive for positive identification. The witnesses knew the appellant and reported him to the area assistant chief. According to PW4 they looked for the appellant but could not find him as he had ran away. He was apprehended on the 19.3.2009 and charged with the offence. I am satisfied that the prosecution did prove its case beyond reasonable doubt and the conviction is proper. The appeal lacks merit and the same is disallowed. Under Section 296(1) of the Penal Code the maximum sentence is 14 years imprisonment. I do find that the 8 year sentence is reasonable. The appellant to serve his sentence. The appeal is disallowed.

Delivered, dated and signed at Kakamega this 30th day of October 2013

SAID J. CHITEMBWE

J U D G E