



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KITALE**

**CRIMINAL APPEAL NO. 22 OF 2010**

**ALEX MASINDE Alias ROBO ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

*(Appeal arising from the decision of Hon. D. M. Ochenja - PM, in Kitale Chief Magistrate's Court in Criminal Case No. 1780 of 2007)*

**J U D G M E N T**

The Appellant, **Alex Masinde Alias Robo**, was convicted and sentenced to death by the Principal Magistrate at Kitale for the offence of robbery with violence contrary to Section 296 (2) of the Penal Code.

It was alleged that on the 8th June 2007 at Moi's Bridge Township Uasin Gishu District, together with others not before Court, the Appellant robbed Philip Kipkorir of cash Kshs. 3,400 and a mobile phone make Motorola C113 valued at Kshs. 2,000 and at or immediately before or immediately after the time of such robbery used personal violence to the said Philip Kipkorir.

Being dissatisfied with the conviction and sentence, the Appellant preferred this appeal on the basis of the grounds in the petition filed herein on 9th March 2010 in which the Appellant generally complains that he was convicted on the basis of Prosecution evidence which was insufficient, incredible and contradictory and also that his defence was not given due weight by the Learned Trial Magistrate who thereby rejected the same and shifted the burden of proof on him.

At the hearing of the appeal, the Appellant represented himself and relied on his written submissions in support of his case.

**Mr. Kimanzi**, the Learned Prosecution Counsel appeared for the State/Respondent and opposed the appeal by submitting that the complainant (Pw 1) was indeed robbed of his property and in the process he was able to identify the Appellant due to presence of electricity light at the scene. That, the complainant's evidence was corroborated by that of Pw 2 and Pw 3 and therefore, the charged was proved beyond reasonable doubt.

The Learned Prosecution Counsel submitted that the Appellant's defence was considered by the Trial Court and dismissed. He contended that the Appellant's conviction by the Trial Court was proper and urged this Court to dismiss the appeal.

Our duty, after considering the submissions by both sides, is to re-visit the evidence and draw our own conclusions bearing in mind that the Trial Court had the advantage of seeing and hearing the

witnesses.

In summary, the case for the Prosecution was that on the material date at about 9.00pm, the complainant, **Philip Kipkorir (Pw 1)**, a driver by occupation, was on his way home when he passed near a hotel called Julika Hotel near a bar called Farmer's Bar where there was electric light. He saw the Appellant following from behind and by-passing him. Without suspecting anything, he continued with his journey and on reaching a dark place, the Appellant rushed at and held his neck. He put up a struggle but the Appellant was joined by five others who attacked and robbed him of his money and mobile phone. His screams attracted people to the scene thereby causing the attackers to flee. People pursued the attackers and managed to apprehend the Appellant who ran and locked himself inside the aforementioned Farmer's Bar.

**Ronald Kibet Kiprop (Pw 3)**, a taxi driver at Moi's Bridge was attracted by screams no sooner had five young men passed where he was waiting for would be passengers. He rushed to the scene of the screams together with others. They found the five young men having pinned down the complainant but they took off on seeing the approaching members of the public.

Kiprop (Pw 3) noted that the Appellant was one of the attackers. He (Appellant) was chased by members of the public and in the process entered a bar from where he was removed and handed to the police.

**Joseph Shikuku Makokha (Pw 2)**, a watchman at Farmer's Bar and Club was on duty at the material time when he saw the Appellant running towards the bar with a crowd of people in hot pursuit and shouting thief! thief!. The Appellant entered inside the bar and the watchman (Pw 2) was ordered by the crowd to eject him or risk the bar being damaged. He (Pw 2) complied, removed the Appellant from the bar and handed him over to the members of the public.

**Linus Likale (Pw 4)**, a Clinical Officer at Kitale District Hospital examined the complainant and confirmed that he suffered injury during the robbery. He (Pw 4) completed and signed the necessary P3 form.

**P. C. Samson Muvutu (Pw 5)**, investigated the case and thereafter charged the Appellant with the present offence which he denied and stated in his defence in Court that he worked at a flower farm in Naivasha and on the material date he was in Naivasha but later travelled to Moi's Bridge and arrived at 7.00pm. He entered a certain bar to drink beer when a person summoned him but he declined. He continued drinking his beer until such time that he walked out of the bar and was accosted by a group of people who arrested and took him to Moi's Bridge Police Station where he stayed for a week before being arraigned in Court. He contended that he did not commit the offence.

From the foregoing evidence, we are satisfied that the occurrence of the offence was not disputed and was in any event, established by the Prosecution through the testimony of the complainant (Pw 1) coupled with that of the taxi driver (Pw 3) and the Clinical Officer (Pw 4). The Prosecution was thus able to fully establish the material ingredients of the offence of robbery with violence.

The basic issue that fell for determination was whether the Appellant was positively identified as being part of the group of people who attacked and robbed the complainant of his property.

Although the Appellant indicated in his defence that he was not involved in the robbery and that he was implicated without good cause, the evidence of his identification as one of the robbers came from the complainant (Pw 1) as corroborated by the taxi driver (Pw 2) and the watchman (Pw 3). The complainant indicated that he saw the Appellant prior, during and after the offence. He said that the Appellant had followed him and that he saw him clearly when they were at a place where there was adequate light provided by electric power. He said that the Appellant held his neck and a struggle ensued. It was then that the Appellant was joined by his criminal gang and in the process, they robbed the complainant who raised alarm thereby causing the gang members to take off.

The taxi driver (Pw 3) saw the complainant having been pinned down by the gang. He confirmed

that the Appellant was in that gang and that he attempted to escape and avoid arrest by running into a bar where he was followed by members of public and apprehended.

The watchman (Pw 2) confirmed that the Appellant ran into the bar to escape from the crowd of people pursuing him. He (Pw 2) indicated that he was forced by the crowd to remove the Appellant from the bar. He then handed him over to the crowd.

The foregoing evidence was sufficient and credible enough to leave no doubt in our minds that the Appellant was positively identified as one of those who robbed and injured the complainant. The electric light at the scene of the offence provided favourable circumstances for his positive identification by the complainant and the taxi driver. His defence was thus discredited and rendered an afterthought.

In the end result, we find that the conviction of the Appellant by the Learned Trial Magistrate was safe and sound and is hereby upheld. The appeal is dismissed.

**(Delivered and signed this ....19th..... day of ....November.. 2013)**

**J. R. KARANJA**

**JUDGE**

**E. OBAGA**

**JUDGE**

**In the presence of:**

**Appellant:** .....

**Respondent:** .....

**Court Clerk:** .....