



men. The passengers settled in and P.W. 1 began collecting fare. Then two men shot up from their seats and ordered everyone to surrender. One of the men with a pistol brandished it. One of the men pushed the bell button and the driver stopped the motor vehicle, but after a few seconds the vehicle started to move again. The man with the pistol jumped out while the second man was wrestled down by the passengers. P.W. 3, the driver testified that he was driving after Kwa-Wanzilu stage where he had dropped and picked up passengers. He heard the alarm bell ring and slowed down the motor vehicle when suddenly a man appeared at the passenger's door of the driver's cabin brandishing a pistol. Sensing danger P.W. 3 drove off and fled into the administration police post.

5. In his defence the Appellant gave unsworn evidence and stated that he was arrested after a disagreement over fare. He said that he had paid Kshs.100/= and expected the conductor to give him change of 40/= since the fare was 60/=. The conductor refused and told the driver to take the Appellant to the police station where he was arrested.
6. Based on the evidence of the prosecution witness the trial magistrate convicted the Appellant.
7. We have analyzed and re-evaluated the evidence on record, noting that this is the first appeal. The evidence shows that the Appellant was a passenger in the said motor vehicle on the material day and time. P.W. 1, P.W. 2 and P.W. 4 were also in the vehicle on the passenger section. Their testimony is clear and corroborates each other. Their testimony is also in tandem with that of P.W. 3 who was the driver. There is no doubt in their testimony that they saw and recognized the Appellant. P.W. 1 stated that there was enough light inside the bus. P.W.2 testified also about the ample light, and how he removed his wallet and threw it under the seat. From the testimony of the prosecution witnesses, it is clear that robbers entered the said motor vehicle. They were more than two, and they had crude weapons including a pistol. After committing the robbery some managed to stop the motor vehicle and escaped, while the Appellant was wrestled down by the passengers and handed over to the police.
8. We are satisfied that the evidence before the trial magistrate leading to the conviction of the Appellant was consistent. What we now must consider are the grounds of appeal the Appellant has put forth. After carefully considering the grounds of appeal we are satisfied that the Appellant was properly identified. He was actually arrested by the passengers and handed over to the police. We accept as true evidence of P.W. 2 and P.W. 4. In addition, we have reviewed the entire evidence and we find as true that there is consistency in the evidence used by the trial court to convict the Appellant.
9. We have also reviewed the defence put forth by the Appellant. The Appellant gave unsworn evidence and stated that he was a passenger in the motor vehicle and that he was arrested due to a disagreement on fare. The trial magistrate considered this defence and rightfully in our view rejected it. It must be he had in mind that the Appellant was in a group of other robbers. While others managed to escape, the Appellant was apprehended by the passengers and handed over to the police. We do not find that the Appellant had a defence in this matter and the trial court did the right thing in holding that the Appellant's defence was sham. In our view Section 169 (1) of the Criminal Procedure Code was properly satisfied by the trial court.
10. Having carefully reviewed the evidence in the trial court, and having considered the grounds of appeal and the submissions of the parties, we reach the conclusion that the appeal must fail. In that regard we dismiss the appeal.

**DATED, READ AND DELIVERED AT NAIROBI THIS 13<sup>TH</sup> DAY OF NOVEMBER 2013**

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**E. K. O. OGOLA**

**JUDGE**

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**J. KAMAU**

**JUDGE**

**PRESENT:**

**In person - the Appellant**

**V.I. Kabaka for the State**

**Teresia & Kipkurui - Court Clerks**