



REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL APPEAL 67 OF 2010

PETER ALFAYO LOVONGA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

1. The Appellant, Peter Alfayo Luvonga was charged with the offence of robbery with violence contrary to **Section 296(2)** of the **Penal Code**. It was alleged that;

“On the 13th May 2008, at Bweri Village, Namira Sub-Location, East BuNyala Location, in Kakamega District North within Western Province, while armed with a dangerous weapon namely pistol robbed Idi Wechuli Wamboko one motorcycle make TVS VICTOR valued at Kshs.140,000/- and immediately before the time of such robbery used personal violence to the said Idi Wechuli Wamboko.”

2. He denied the charge and in evidence tendered before the trial Court, it was the case for the Prosecution that on 13th May 2008 at Bweri village, PW1, Idi Wechuli Wamboko was accosted by a man whom he had not known before, and told him that he was a CID Officer and wanted to make some arrests. PW1 doubted the authenticity of that Statement but the Appellant produced handcuffs and a pistol and so PW1 who was an operator of a motorcycle agreed to take the man where he wanted to go. On the way, the man suddenly knocked PW1 off the motorcycle and then picked the same and rode off, leaving PW1 by the roadside, As he stood there, PW2, Sammy Sukula Karakacha, another motorcycle operator found him there. PW1 explained his predicament and PW2 told him that he had met a man riding a red motorcycle in the opposite direction.

3. It was PW2’s evidence that prior to that incident, on 6th May 2008 at 10.00 a.m. a man had approached him and told him that he was an Army officer stationed at Eldoret and he wanted a motorcycle ride to Malava. The two agreed on a Kshs.80/- fare and he was taken to Malava where he disappeared into a hotel without making payment.

4. On 13th March 2008, he met the same man riding a red motorcycle and the man threw kshs.100/- at him as he passed and shortly thereafter, he met PW1 who was in distress after narrating how his motorcycle had been taken away.

5. PW2 added that on 19th May 2008, he took a passenger to a place called Mausi and on reaching there he found that a funeral was being undertaken. He saw the same man there and so he called PW1 and the latter confirmed that the man who had taken his motorcycle was at the funeral. Police officers from Kabras Police Station were called and the man who is now the Appellant was arrested.

6. PW3, Duncan Manigwa, a Clinical Officer at Shibwe Sub-District hospital produced a P3 form showing that PW1 had suffered injury to the thorax caused by a blunt object.
7. PW4, Corporal William Maru investigated the case and after taking the Statements from witnesses decided to charge the Appellant with the offence of robbery with violence. No recoveries were made when the Appellant's house was searched.
8. In his defence, the Appellant stated that he was arrested while attending his grandmother's funeral and when his house was searched, nothing was recovered and he was later charged. He denied the offence but was convicted and sentenced to death.
9. At the hearing of the Appeal, Mr. Orinda agreed with the Appellant that the evidence tendered was not sufficient to warrant a conviction and upon re-evaluation of the evidence on record, we are inclined to take the same view. We say so because the Appellant's conviction was based substantially on the evidence of PW2. However, a closer look of that evidence would show that it was not credible. He had a disagreement with the Appellant prior to the incident leading to the charge of robbery and his evidence may have been triggered by that disagreement.
10. It is interesting that he is the one who was able to be at every place where the Appellant was on the three important occasions regarding this incident. Without corroboration of his evidence we are unable to believe him.
11. We also note that although PW1 did not know the Appellant prior to the incident it was PW2 who pointed the latter to PW1 and thence to the Police officers who arrested him. PW4 failed to give credible evidence as to why he failed to conduct an identification parade and why he relied entirely on the discredited evidence of PW2.
12. All the gaps in evidence can only lead to one conclusion; **the benefit of doubt must be given to the Appellant.**
13. We shall allow the Appeal, quash the conviction, set aside the sentence and order that the Appellant shall be ordered to be released unless he is otherwise lawfully held.
14. Orders accordingly.

D. A. ONYANCHA

I. LENAOLA

JUDGE

JUDGE

**DELIVERED, DATED AND COUNTER-SIGNED BY S. CHITEMBWE, JUDGE AT
KAKAMEGA THIS 23RD DAY OF FEBRUARY, 2012**

**S. CHITEMBWE
JUDGE**