



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT BUNGOMA**  
**CRIMINAL APPEAL NO.44 OF 2010**

**JOHN WAFULA SIMIYU.....APPELLANT**  
**VERSUS**  
**REPUBLIC.....RESPONDENT**

**(from the conviction and sentence of E.C. Cheron, Principal Magistrate in Webuye P.M. Cr Case No.1648 of 2008)**

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

The Appellant, John Wafula Simiyu, alias Davy Nisuche Wafula, was jointly charged with another, with 10 counts of Robbery with Violence contrary to Section 296 (2) of the Penal Code. The appellant was acquitted of all the counts except count 10. He was sentenced to death on the said count of robbery with violence. He appealed on both conviction and sentence.

The appellant argued his appeal by a written submission admitted by this court on 8.12.2010. In his submissions the appellant challenged the strength and propriety of the evidence in which his conviction was based. He said that the evidence of his identification was so poor and unreliable that a conviction based on it should not be left to stand for being unsafe.

The Republic through the State Counsel on its part could not support the conviction. M/s Letting agreed with the appellant that identification of the appellant was indeed weak and unreliable.

We have on our part as the appellate court, independently perused and considered the evidence upon which the appellant was convicted. We agree with the State Counsel that the evidence of identification was unreliable. The police identification parade, was a sham.

The re-evidence that prosecution witnesses knew the appellant well before the robbery. And yet they failed to give his name to the police if they really saw him during the robbery. But they pretended to pick him during the police identification parade.

In the above circumstances the appeal is hereby allowed. The conviction is quashed. The sentence of death is hereby set aside. The appellant is ordered released from prison forthwith, unless otherwise therein lawfully held. Orders accordingly.

Dated and delivered at Bungoma the **26<sup>th</sup>** day of **MAY** 2011.

**D.A. ONYANCHA**  
**JUDGE**

**F.N. MUCHEMI**  
**JUDGE**