



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUSIA

HCCRA. NO. 45 A & 45B OF 2008

GODFREY GODESHER

**OJIAMBO)APPELLANTS
PETER DAVIDSON**

VERSUS

**REPUBLIC.....RESPON
DENT**

(From the conviction and sentence of A.O. Osodo, P.M. In Busia Criminal Case NO.2248 of 2006)

J U D G M E N T

The appellants, Godfrey Godeshor ojiambo and Peter Davidson, were originally jointly charged with the offence of robbery with violence, contrary to section, 296(2) of the Penal Code. They were both convicted and sentenced to death. They in these two appeals, they appealed against the conviction and sentence.

The two appeal were consolidated and prosecuted under Criminal appeal No.45B of 2008.

When both appeals came up for a hearing, the Republic through the State counsel, Mr. Okeyo conceded both appeals.

Mr. Okeyo submitted that although the convictions were based on the principle of recent possession, the evidence adduced before the trial magistrate, did not support the conviction. Mr. Okeyo stated that the items allegedly robbed by the appellants were not found in the physical or effective possession of the appellants.

Mr. Okeyo also submitted that identification of the those who had allegedly committed the robbery was poor and that police identification parade was required but none was conducted.

We have carefully perused and considered the record of evidence. We entirely agree with Mr. Okeyo's submissions. This meant that there was no adequate link between the robbery and the appellants. In the circumstances we hereby allow the two appeals herein.

The convictions are hereby quashed and the sentences of death set aside. Each appellant is hereby set at liberty unless otherwise lawfully held in prison. Orders accordingly.

Dated and delivered at Busia this 28th day of June 2011.

D. A. ONYANCHA
J U D G E

F. MUCHEMI
J U D G E