



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**  
**CRIMINAL APPEAL NO. 140 OF 2006**

*(From original conviction and sentence in Criminal Case No. 2152 of 2004 of the Chief Magistrate's Court at Nakuru – E. OMINDE, PM)*

**PETER INGOSI PAUL NGEI.....APPELLANT**  
**VERSUS**  
**REPUBLIC OF KENYA.....RESPONDENT**

**JUDGMENT**

Peter Ingosi Paul Ngei was charged with the offence of robbery with violence contrary to **Section 296(2)** of the **Penal Code**. The particulars of the offence are that on 2<sup>nd</sup> of August 2004 at Jawatho Estate Njoro, within Nakuru District, jointly with others not before the court, while armed with offensive weapons namely; axes, pangas and hammers, robbed Joram Githinji Njiri of one video deck, make Samsung, one camera make Olympia, two wrist watches, a radio cassette, make Philips, two mobile phones, make Nokia and Motorola, two pangas, two coats, two handbags, two sweaters, two dresses and a pair of shoes, cash Kshs.3,000/- all valued at Kshs.54,750/- and immediately before or after the said robbery, threatened to use actual violence on the said Joram Githinji.

After a full trial, the trial court found the appellant guilty; he was convicted and sentenced to death. Being aggrieved by both the conviction and sentence he filed this appeal. The grounds of appeal are contained in the memorandum of appeal and the submissions which he made to the court. The grounds can be summarized as follows:-

1. **That the trial magistrate erred in relying on the evidence of a single identifying witness;**
2. **That the trial court failed to analyse the prosecution case;**
3. **That the trial court failed to consider the appellant's defence;**
4. **That the trial court failed to consider the fact that there existed bad blood between the complainant and the appellant;**

Mr. Omwega, learned counsel for the State supported the conviction and urged that the identification was based on recognition whereby PW1 recognised the appellant as a person who used to work for him and that at the earliest opportunity, described the appellant to PW4, a Police Officer. Counsel urged this court

to dismiss the appeal.

The prosecution called a total of 5 witnesses while the appellant made an unsworn statement. A brief background of this case is that Joram Githinji (PW1) was at his home with his wife on 31/8/2004 at about 1.30 p.m. when they heard the dogs barking. He peeped through the window and saw light from torches and about 5 – 6 people at the gate. Two people jumped over and opened the gate for others. He informed his wife that there were robbers and a few minutes later, he heard them call his name and tell him to open as they had come. The wife pressed the alarm and started to scream. PW1 called 999. The robbers climbed on the roof, cut the iron sheets. PW1 and his wife (PW2) had climbed up the ceiling as they had stairs leading there and they screamed for help while there. The robbers were not able to get in through the roof and went back down and one said they must get to them that day. They started to struggle with a window and managed to demolish it. Three robbers entered and opened for others. They started to search the house, broke any locked door. They picked all they wanted and demanded that PW1 and PW2 come down and threatened to burn the house. They collected table clothes and set them on fire. They also put on all lights in the house and PW1 saw his neighbour and a person who used to do for him some casual jobs leading the other robbers, whom PW1 identified as the appellant. Police arrived at 2.10 a.m., shot in the air and the robbers ran off. Police recovered an axe and a panga in the sitting room. PW1 told police that he knew one suspect who was arrested a week later and he was called to the identification parade where he identified the appellant.

All the items which were stolen were never recovered. PW1 denied having any grudge with the appellant. The window which was damaged by the robbers was produced in evidence.

PW2, Tabitha Muthoni Githinji, the wife to PW1 recalled what took place that fateful night. She recalled that they hid in the ceiling of their house as they called out for help. The robbers broke the window, entered the house and put on the lights. They called on PW1 to give them money. They took the table clothes and lit a fire. They took away the items named in the charge sheet. Neighbours came to assist as they shouted for help. PW1 identified one of the people who had been outside. They ransacked the house, took the items listed in the charge sheet and they three down their phones from the ceiling. Neighbours and police came to their help. Police shot in the air once and the robbers fled. The fleeing robbers left behind an axe and a panga. PW2 denied that she knew the person whom her husband identified because it is PW1 who did the farm work and she used to go to work in the supermarket.

PW3, Francis Mwangi Wagura recalled that on 31/8/2004 at about 1.50 a.m. he was woken up by screams and an alarm. He went to the home of PW1 where screams emanated from. He also joined in the screaming asking for help but the robbers did not leave. PW3 recalled that he rode his bicycle to the police station to seek help, he met the police at the gate, they went back to PW1's house and on arrival at the gate, there was still commotion in the home and the gates were locked and police could not get in. They shot in the air and the robbers escaped through the back gate. He saw a window had been demolished from the wall, the roof was cut open. He identified the accused as a resident of the same village but did not know his name.

PW4, PC Thoreas Kingoo with other police officers from Njoro Police Station were called on phone. On arrival at the gate the robbers were still demolishing the windows and the gate was locked. They fired in the air and the robbers ran off through another gate. He recovered an axe, the window that had been removed and a panga. PW1 told him that he had recognized a person he used to give casual jobs but could not recall his name. On 8/9/2004 the complainant called in and informed him that he had seen the suspect in the village and pointed the appellant out from afar and when the appellant noticed he was being followed he started to run. He was chased and was arrested. After the arrest, PW5 conducted an identification parade at Njoro Police Station. PW1 picked out the appellant from the parade and the appellant said that he was known to the complainant who had once employed him and they differed.

When called upon to enter his defence, the appellant said that he is a farmer in Narok but had gone back to his home in Njoro where he was arrested and it was alleged he was drunk. He was surprised to be charged with the offence of robbery.

As the first appellate court, it is our duty to re-evaluate and analyse the evidence afresh and arrive at our own findings bearing in mind that we did not have the opportunity to see the witnesses. After re-evaluating the evidence on record, we have no doubt that the home of the complainant was raided on the night of 31/8/2004 and a part from the damage done to the house, some properties were carried away. PW1 and PW2 recounted in detail the events of the said night. Although the complainants were not injured, the robbers were armed with dangerous weapons i.e. axe and panga. They were about five to six in number. The window was violently demolished from the house in order for robbers to gain entry, they broke doors that were locked and they also burnt the complainants' table clothes in a bid to smoke out PW1 and PW2 from their hiding place. PW3, the neighbour who came to the scene saw the damage that had been done. After the robbers fled, the police found an axe and a panga at the scene. We find as the trial court did that indeed an offence of robbery with violence was committed.

The incident occurred at about 1.30 a.m. The complainants had been asleep when they were woken up by the barking dogs. According to both PW1 and PW2, the robbers lit the table clothes and switched on electricity lights. That is how PW1 was able to see the robbers and identify one of them. It is PW1 who later identified the appellant to the police following which he was arrested. During cross examination the appellant agreed that he worked for PW1 but that they had disagreed over payment of wages which allegation PW1 denied. At the parade, the appellant also agreed that he was known to PW1. We therefore find that the appellant was not a stranger to PW1 and even under the circumstances PW1 was able to identify him from the lights in the house and the fact that the robbers took quite sometime in the house. We need to point out that the conduct of the identification parade was unnecessary since it is PW1 who saw the appellant and called the police.

As to whether there existed a grudge between PW1 and the appellant, it is only in cross examination of PW1 that the appellant made such an allegation, which PW1 denied. In his defence, however, the appellant never alluded to the existence of any grudge between him and PW1. He generally denied the offence and said he was surprised at the arrest and later trumped up charges. Going by the allegations that the appellant had made during the hearing of the case, the defence he made was a bare denial and did not displace the prosecution evidence at all.

There is no requirement in law as to how many witnesses should be called by the prosecution to prove a fact. **Section 143** of the **Evidence Act** reads as follows:-

**“S.143. No particular number of witnesses shall, in the absence of any provision of law to the contrary, be required for the proof of any fact.”**

If the circumstances under which an offence is committed were difficult, it is only required that the court warns itself of these circumstances and make its finding. In this case, it is only PW1 who identified the appellant. There is evidence that the robbers switched on the electricity lights in the house and the robbers stayed in the house for quite a while as they wrecked havoc. PW1 watched from the ceiling. He was no stranger to PW1 and the allegation of bad blood between PW1 and the appellant was never substantiated.

The appellant's allegation that the trial court did not analyse the evidence is not sustainable. The trial court considered in detail whether an offence of robbery with violence was committed and whether the appellant was one of the robbers. The trial court found in the positive that the appellant was properly identified because of the light in the house and the time the robbers took in the house and that the prosecution had proved the ingredients required to prove an offence of robbery with violence.

In the end we are satisfied that the trial court did not err but arrived at the correct decision and we hereby confirm the conviction. The appellant was sentenced to death after the trial court observed that he was not remorseful. Taking into account the fact that the complainant and wife were not injured, we hereby set aside the sentence of death and substitute therefor with sentence of life imprisonment.

**DATED and DELIVERED this 20<sup>th</sup> day of December, 2011.**

**R.P.V. WENDOH**  
**JUDGE**

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**M. J. ANYARA EMUKULE**  
**JUDGE**

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**PRESENT:**

Appellant present – in person

Mr. Omari for the State.

Kennedy – Court Clerk.