



**REPUBLIC OF KENYA
IN THE HIGH COURT OF OF KENYA
AT NAKURU**

Criminal Appeal 132 of 2009

(From original conviction and sentence in Criminal Case No. 1660 of 2008 of the Principal Magistrate's court at Molo – S.M.S. SOITA, PM)

SAMSON SOMALI KOSKEI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

SAMSON SOMALI KOSKEI, the appellant, was with three others charged with two counts of robbery with violence contrary to **Section 296(2)** of the **Penal Code**. In count 1 it was alleged that on the 22nd day of September 2008 at Nakuru Teachers College in Nakuru District within Rift Valley Province, being armed with dangerous weapons namely a home made gun, swords and metal bars, the appellant jointly with others not before court, robbed Francis Kibet Ngetich off his motor cycle make Bajaj Reg. KBA 207L valued at Kshs.85,000/-, one Nokia 110 mobile phone valued at Kshs.2,500/- and cash Kshs.2,800/- and at the time of such robbery wounded the said Francis Kibet Ngetich.

In count 2 it was also alleged that on the same date and about the same time the appellant and his confederates not before court also robbed Geoffrey Kipngetich Langat off his Bajaj motor cycle Reg. No. KBD 454B valued at Kshs.85,000/- and cash Kshs.1,500/- and at the time of such robbery, wounded the said Geoffrey Kipngetich Langat. The prosecution case was that PW1 was approached by customer he had not known previously to take him to

Nakuru Teachers College. When he got near the College, he was asked to turn into Kenyatta Farm. 100 metres away he saw two people beside the road and the customer asked him to stop when he got near them. Immediately thereafter, the customer held him as the two people beat him unconscious and robbed him of his motor bike and the above stated items. When he came to he heard someone groaning in the grass nearby. He went to his assistance and found out that he was also a victim of robbery.

The matter was later reported police whom he told he could identify the people who beat him. At an identification parade held later, he identified appellant and another. He said the customer who had hired him was not in court.

PW2, the other complainant, was also hired and taken to the same area near the College where he was diverted into a side road, beaten and robbed. At an identification parade, he identified the appellant and another as the people whom he found on the road at the sport where he had been asked by his customer to stop who beat him and robbed him.

In his defence, the Appellant did not disown PW1 & PW2. He said PW1 approached him to sell his bike for him. Later PW1 brought PW2 who also wanted to sell his. He got buyers and sold them and was paid Kshs.5,000/- as commission. After two weeks he was arrested. PW1 and PW2 changed their story and feined robberies in order to be compensated by their insurers.

In his petition of appeal and submissions the Appellant faulted his identification and argued that the case against him was not proved to the required standard. He claimed that PW1 and PW2, the identifying witnesses, having seen him in cells before the identification parade, his identification at the parade was no better than dock identification which is worthless.

He dismissed the medical evidence as unreliable because the clinical officer, PW... did not give the age of the injuries and appellant's blood

stained clothes were not produced.

The Appellant also submitted that the prosecution case was riddled with contradictions. While PW1 said he was tied and unable to help PW2, PW2 himself said it was PW1 who untied him. He said this supported his version of the story that he had sold the bikes on behalf of PW1 and PW2 who later changed. He faulted the trial magistrate for relying on the evidence of PW3 who did not witness the robbery and believing her story that she had seen him near the scene and that she knew him from previous incidents as a thief. On that evidence, the appellant complained that the trial magistrate concluded that he must have robbed PW1 and PW2

This being a first appeal we are under obligation to re-evaluate the evidence on record and satisfy ourselves that the appellant's conviction is well founded. **Okeno Vs Republic [1972] EA 32** and **Mwangi Vs Republic [2000] 2 KLR 28**. To that end we have therefore considered these submissions and carefully read the record of appeal.

The main point raised in this appeal is identification. The robbery was in broad daylight at about 12.00 noon. The robbers were not masked. PW1 said he was with them for about 5 minutes. PW2 said his robbery took about 30 minutes. We find it difficult to believe the appellant's contentions that PW1 and PW2 trumped up charges against him to feign a robbery so that they could be compensated by their insurers. Those witnesses could not have gone as far as inflicting injuries on themselves, especially PW2 who had a serious cut on the head, to feign a robbery. Besides this the appellant did not say why they implicated him. PW3 testified that on the material date she found the appellant with other people near the scene. Appellant had a rope. She said she knew appellant as a suspected thief in response to his question in cross examination. It is therefore not true that she implicated appellant based on his antecedents. Having re-evaluated the evidence on record we are satisfied that the appellant was positively identified as one of the robbers of PW1 and PW2. Consequently we dismiss his appeal against conviction.

There is only one sentence for capital robbery and that is death. That is the sentence imposed on the appellant. We also dismiss his appeal against sentence. In the upshot we dismiss this appeal in its entirety.

We note that the learned trial magistrate having apparently convicted the appellant on both counts, did not specify in respect of which count he sentenced him to death. One cannot suffer death twice. We therefore direct that the sentence in respect of count 2 be held in abeyance pending the final outcome of the one in count 1.

DATED and DELIVERED at Nakuru this 26th day of May, 2010.

D. K. MARAGA

JUDGE.

J. A. EMUKULE

JUDGE.