



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT BUNGOMA  
Criminal Appeal 34 of 2009  
(From Original Bgm CM Cr. Case No.1689 of 2008)**

**BONFACE ANGUBA NALIANYA .....APPELLANT**

~VRS~

**REPUBLIC.....RESPONDENT**

**JUDGEMENT**

The Appellant Bonface Anguba Nalianya was convicted by a Bungoma Court of robbery with violence contrary to section 296 (2) of the Penal Code and sentenced to death. He appealed against the judgment of the court as expected.

In his petition of his appeal and in the written submissions, the appellant raises the following issues:

- a) **The prosecution failed to produce the investigation report in court;**
- b) **The evidence was not sufficient to convict the Appellant and was fabricated, contradictory and incredible;**
- c) **Identification was not established;**
- d) **That his alibi defence was rejected.**

The facts of the case are that the complainant PW1 who is a teacher cycled his motorbike home from Kitale. On reaching home as he was opening the door, he was confronted by some thugs who threatened to shoot him if he entered the house. He lit the hurricane lamp. The attackers forced their way inside and beat PW1 up injuring him. The robbers demanded the keys to PW1's motor bike and his mobile phone. His television set and solar panel were taken away. PW1's children were injured in the struggle as they tried to resist. The complainant identified the Appellant and one of his accomplice whom he said were boda boda operators. PW2 the daughter of PW1 was at home during the incident. She said she identified the first accused who followed her to the bedroom. There was a lantern which was till on in the house. The Appellant was arrested by PW5 and PW6 in Bungoma town at 4.00 a.m the same night. He was on top of a motor bike and was in possession of the complainant's television set and solar panel as PW1 later confirmed it was his property.

The Appellant's defence was that he was arrested at 5.30 a.m as he traveled on a bicycle to go to his carpentry workshop at Kanduyi. He said that the officers stopped the bicycle and the Appellant disembarked. He was asked for his identity card. The cyclist was released and the Appellant was locked in the police cells at Bungoma Police Station. Later he was charged with the offence.

PW1 said he had seen the Appellant before the incident. He knew him as a boda boda operator in Bungoma town. PW1 was injured and treated by Dr. Ochilo who produced the P.3 form. A few hours after the incident, the Appellant was arrested carrying the television set and a solar panel of the complainant. PW5 and PW6 the police officers who arrested him and testified in court. The two

officers did not know the Appellant before the incident. The magistrate believed them and we agree with the magistrate. The magistrate observed that an identification parade was not held by the police. He also found that the conditions were not conducive for positive identification. The magistrate did not rely on the shaky visual identification evidence. He applied the doctrine of recent possession based on the evidence of the two police officers (PW5 and PW6). The defence of the Appellant was considered and the court found that he had not given a reasonable explanation as to how he came into possession of the complainant's goods. We are satisfied that the Appellant's defence was rejected after due consideration. The complainant produced receipts for the purchase of the television set and the solar panel which led the magistrate to make his finding free of any doubt.

We agree with the magistrate in his finding that recent possession was established and the doctrine correctly applied against the Appellant. The defence of the accused was a mere denial and did not shake the prosecution's evidence. The Appellant was convicted on overwhelming evidence.

The issue of identification does not arise in this appeal because the accused was arrested on the spot. PW5 and PW6 could not mistake him for any other person.

The Appellant said that the investigation diary was not produced by the witnesses. We find that no miscarriage of justice of justice was caused by failure to produce the diary by PW5 and PW6.

It is our finding that this appeal has no merit and we dismiss it accordingly. The conviction and sentence are hereby upheld.

**D. A. ONYANCHA**

**JUDGE.**

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

Judgment dated and delivered on the 15th day of June 2010 in the presence of:  
The Appellant  
The state counsel Mr Ogoti .