



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**CRIMINAL APPEAL CASE NO. 122 OF 2009**

**MARTIN KIMATHI MUKARIA ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

***(Being an appeal against the judgment of J. Nyaga SPM in Maua Criminal Case No. 2811 of 2007 delivered on 17<sup>th</sup> day of June 2009)***

**JUDGMENT**

The appellant was charged with offence of robbery with violence contrary to section 296 (2) of the Penal Code before the Senior Principal Magistrate Court Maua in Criminal Case No. 2811 of 2007. He was convicted as charged and was sentenced to death. PW1 Christine Kaguri Kiogora was on the way to the bank to bank her employers' Kshs. 200,600/=. She was carrying the money in a paper bag where she had also put her mobile phone and a bunch of keys. She was on foot. Prior to her leaving her employers' premises, she had noticed the appellants standing near there. As she walked to the bank, she was approached by three men. Amongst them was the appellant. They tried to grab her paper bag. She resisted and held it close to her chest. The appellants slapped her and produced a sword. She let go of the paper bag. Before they ran away with the paper bag, the appellant slapped her again. PW1 tried to arise where she had fallen screamed then fainted. She was taken to hospital but was discharged on being treated. Her injuries were confirmed by the clinical officer who produced the P3. An identification parade was mounted when the appellant was arrested and PW1 was able to pick the appellant out of the parade. PW2 Michael Mutuma has a business close to PW1's employer's business premises. The premises are 7 metres apart from each other. He had noticed the appellant walking and later witnessed a struggle between her, the appellant and two other people he did not know. That was 30 metres away from where he was. He said that he knew the appellant as, "Mato." He knew him because the appellant previously used to supply beer at a bar nearby and he used to greet PW2's worker called Mutwiri. He too took part in the identification parade, even though he knew the appellant before, and was able to pick out the appellant. PW4 was the police officer who conducted the identification parade with eight people excluding the appellant. He confirmed that the appellant consented to take part in the parade and after the exercise where he was picked by PW1 and 2 he signed the forms confirming that the identification parade had been carried out correctly. The appellant was put to his defence by the trial magistrate. In his defence, the appellant stated that he was charged for having failed to pay a bribe to the police.

The incident occurred at 11am. PW1 and PW2 had noted the appellant even before the incident. He was in the vicinity. The identification parade was criticized by the appellant in his defence. The appellant however did not raise those issues during his cross examination of PW4. That line of defence therefore is indeed an afterthought. We have examined the prosecution's case and we find that the prosecution well met the criminal standard of proof beyond reasonable doubt. The evidence was not in any way weakened by the defence raised by the appellant. On the whole, we are in agreement with the trial magistrate's finding in his judgment where he stated:-

***"I however have no doubt that the accused (appellant) slapped the complainant and robbed here cash, a mobile phone and bunch of keys. He was in the company of two other people when they robbed her."***

We find that we cannot interfere with the trial court's finding on facts. That finding cannot be faulted. The appeal by the appellant has no merit and is dismissed.

Dated and delivered at Meru this 29<sup>th</sup> day of October 2010.

**LESIT, J.**

**JUDGE**

**KASANGO, M.**

**JUDGE**

Read, signed and delivered at Meru this 29<sup>th</sup> day of October, 2010.

In The Presence Of:

Kirimi/Mwonjaru ..... Court Clerks

Appellant ..... Present

Mr. Kimathi ..... For the State

**LESIT, J.**

**JUDGE**

**KASANGO, M.**

**JUDGE**