

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT ELDORET

Criminal Appeal 44 of 2007

ALFRED SHIVISI SHIKOLI APPELLANT

VERSUS

REPUBLIC RESPONDENT

JUDGEMENT

The Appellant Alfred Shivisi Shikoli (the Appellant) was charged in the Principal Magistrate's Court at Kapsabet with two counts, and after his trial he was acquitted on the first count of robbery with violence contrary to Section 296 (2) of the Penal Code, but was convicted on the second count of robbery with violence contrary to Section 296 (2) of the Penal Code. He was thereafter sentenced to the mandatory death sentence in respect of the later count.

The particulars contained in that charge were that on 20th day of May, 2005 at Kipsugur Area in Nandi North District of the Rift Valley Province, jointly with others not before Court being armed with a dangerous weapon namely panga robbed Patrick Aluvanga of cash Shs. 280/= and at or immediately before or immediately after the time of the robbery used actual violence to the said Patrick Aluvanga. And in count two at the same time and place he is said to have robbed Wickliffe Opiyo of cash Shs. 100/= and immediately before or immediately after the time of such robbery used actual violence to the said Wickliffe Opiyo.

The Appellant has now appealed against both conviction and sentence. Mr. Chirchir, the learned State Counsel readily conceded the appeal on the grounds that the Complainant, the only relevant witness was not in a position to see and recognize the Appellant. The Complainant testified that he was able to identify the Appellant through his voice but he never said if he knew the Appellant before. There was no any other evidence to connect the Appellant to the commission of the offence. He also conceded that it was not quite clear from the record how the Appellant came to be arrested. The Investigating Officer was never called to testify nor any of the members of the public who arrested the Appellant and took him to Kapsabet Police Station.

We entirely agree with Mr. Chirchir and that being the view we take of the matter, we allow the Appeal, quash the conviction, set aside the sentence of death and order that the Appellant be released from prison forthwith unless held for some other lawful cause.

DATED AND DELIVERED AT ELDORET THIS 30TH DAY OF JULY, 2009.

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J. L. A. OSIEMO

JUDGE

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P. M. MWILU

JUDGE