



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

**Criminal Appeal 160 of 2005**

**GEOFFREY MIHESO..... APPELLANT**

**VERSUS**

**REPUBLIC..... RESPONDENT**

**JUDGEMENT**

The Appellant together with two others was charged with two counts of robbery with violence contrary to section 296 (2) of the Penal Code. They were also charged with two counts of robbery contrary to section 296 (1) of the Penal Code. The appellant was found guilty of the offence of simple robbery and sentenced to five years imprisonment.

Being dissatisfied with the conviction, the appellant preferred this appeal. He relied on his grounds of Appeal which are:-

- i. The Identification of the appellant was not proper.***
- ii. When the first report was made the appellant's name was not given to the police.***
- iii. The arresting officer was not called to testify.***
- iv. No exhibits were recovered from the appellant.***
- v. Appellant's alibi defence was not considered.***

Mr. Karuri, learned State Counsel opposed the appeal. Counsel submitted that the appellant was positively identified by PW1 using torch light. PW2 knew the appellant as they went to school together. PW1 also knew the appellant as a Boda-Boda operator. Counsel further submitted that PW2 also identified the appellant using Torch light. He knew the appellant prior to the robbery incident and he gave appellants name to the police. The appellant's defence was considered by the trial court.

The appellant herein was the 3<sup>rd</sup> accused before the trial court. PW1, Napoleon Wabuga Murende testified that he had known the appellant for about 20 years. There was a candle in the house that was not put off when the robbery took place. He had flashed and recognized the robbers using his torch before he was hit on the hand and the torch fell.

PW2, Daniel Muchesi Murende, a brother to PW1 also identified the appellant using a torch. He knew him before. PW2 testified that he had given the appellant's name to the police. The appellant was left guarding PW2 while his accomplices were removing things from his house.

In his defence the appellant testified that he was arrested while working at his Jua Kali premises repairing bicycles on 13.11.2003. He denied having committed the offence.

From the prosecution evidence, PW1 and PW2 testified that they identified the appellant as someone they knew before. According to PW1 there was light from a torch and a candle. I am satisfied that the appellant was positively identified. The evidence of both PW1 and PW2 on identification is credible and there is no reason as to why they would have implicated the appellant. The prosecution's evidence was consistent. The appellant's alibi defence did not disprove the prosecution's evidence. The non-recovery of stolen items from the appellant does not disprove the evidence on identification. The stolen items were capable of being disposed off. The fact that the Investigating Officer did not testify did not prejudice the appellant.

In the end, I do find that the appeal lacks merit and the same is disallowed.

*Delivered, dated and signed at Kakamega this 24<sup>th</sup> day of September, 2009.*

**SAID J. CHITEMBWE**

**J U D G E**