



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

**AT MOMBASA**

**Criminal Appeal 312 of 2004**

**MWABENGA ALFAN MWAMZIMBO.....APPELLANT**

**-AND-**

**REPUBLIC .....RESPONDENT**

***(An appeal from the judgment of Principal Magistrate Mrs. L. N. Mbatia***

***dated 7<sup>th</sup> December, 2004 in Criminal Case No. 266 of 2004 at Kwale Law Courts)***

**J U D G M E N T**

We have considered the facts of this case, against the background of the charges of robbery with violence which had been brought against the appellant. It is clear that under S.296(2) of the Penal code (Cap.63, Laws of Kenya), certain essential conditions have to be satisfied for a finding to be made that there has been a robbery with violence; these are:

Use of violence, being armed, and being in numbers while attacking the complainant.

From the facts, and from the submissions of counsel, it is not clear that those conditions were satisfied; and therefore there was no basis for charges of robbery with violence.

Learned Counsel *Mr. Onserio* has also brought to this court's attention certain shortcomings in respect of identification at the material time.

We came to the conclusion that proof beyond reasonable doubt was not achieved.

We allow this appeal, against both conviction and sentence. We order that the appellant shall forthwith be set at liberty, unless otherwise lawfully held.

DATED and DELIVERED at MOMBASA this 8<sup>th</sup> day of September 2009.

**M.K. IBRAHIM**

**J.B. OJWANG**

**J U D G E**

**J U D G E**