

WESLEY KIPNGETICH CHUMBA 1ST APPELLANT

WYCLIFFE KHAYUMBI KHAISANGU 2ND APPELLANT

VERSUS

REPUBLIC RESPONDENT

JUDGMENT

The two Appellants **WYCLIFFE KHAYUMBI KHAISANGU** and **WESLEY KIPNGETICH CHUMBA** were tried and convicted before Kapsabet Senior Resident Magistrate (S. Atonga Esq.) for the offence of robbery with violence contrary to Section 296 (2) of the Penal Code. Upon their conviction they were sentenced to death, which is the only punishment prescribed by law. They have now appealed to this Court against both conviction and sentence.

It was the prosecution case that on 27th December, 2004 at about 11 a.m. the Complainant was with **ALEX KIPKOSKEI** (PW 2) taking local brew (Busaa) at Surungai in Kapsabet Town when Wesley Chumba the second Appellant who was also taking the local brew at the same place decided to attack both Complainants. The first Appellant held Adam Morogo (PW 1) by the neck and knocked him down and snatched a wallet from him which contained cash Shs. 5,000/= . The Appellants then escaped. The matter was reported to the police at Kapsabet Police Station. Later the Appellants were arrested and charged with this offence.

After the trial Magistrate listened to the prosecution evidence and the defence found the Appellants guilty. There is no evidence as to who identified the Appellants to the Police officers who arrested them and the robbed money was never recovered.

It is trite that it is our duty as the first Appellate Court to consider the evidence, evaluate it and draw our own conclusion in order to satisfy ourselves that there was no failure of justice and after we have done that, we have no doubt that the Appellants' convictions are both unsafe and unsatisfactory. The learned State Counsel does not support the conviction and rightly so in our view.

The appeal is allowed the convictions are quashed, sentences set aside and we order that the Appellants be set at liberty forthwith unless otherwise lawfully held.

DATED AT ELDORET THIS 21ST DAY OF OCTOBER, 2009.

J. L. A. OSIEMO

JUDGE

P. M. MWILU

JUDGE