



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

**Criminal Appeal 63 & 64 of 2008**

**ABDULAHI HASSAN HAKALE.....1<sup>ST</sup> APPELLANT**

**IPHRAHIM DIDA.....2<sup>ND</sup> APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

The appellants Abdulahi Hassan Hakale and Iphrahim Dida (*1<sup>st</sup> and 2<sup>nd</sup> appellants respectively*) were charged with two counts of the offence of robbery with violence contrary to section 296 (2) of the Penal Code. The particulars of offence in the 1<sup>st</sup> count state that on the 27<sup>th</sup> day of November 2006 at Nyahururu Township in Laikipia District within Rift Valley Province, the 1<sup>st</sup> and 2<sup>nd</sup> appellant jointly with another not before court, while armed with offensive weapons namely knives, robbed SAUL WACHANA SIMIYU cash Kshs 4,000/=, one mobile phone make NOKIA 1100 valued at Kshs 3,500/=, one jacket, national identification card and voters card, all valued at 9,000/= and at or immediately before or immediately after the time of such robbery used actual violence to the said SAUL WACHANA SIMIYU.

The particulars of the offence in the 2<sup>nd</sup> count state that on the 27<sup>th</sup> day of November 2006 at Nyahururu Township in Laikipia District within Rift Valley Province jointly with another not before court, while armed with offensive weapons namely knives, robbed GLADYS MORAA ATANDI one leso valued at Kshs 300/= and at or immediately before or immediately after the time of such robbery used actual violence to the said GLADYS MORAA ATANDI.

After a full trial before the learned Principal Magistrate S. M. Mungai the appellants, though found guilty, were convicted of simple robbery and sentenced to serve seven years imprisonment. The appellants then filed this appeal against both the conviction and sentence but in course of the hearing they withdrew their appeal against the conviction, asking only that the sentence be reduced.

I have analysed and re-evaluated the evidence adduced at the trial. The two appellants were identified by their victims PW1 and PW2 whom they attacked in the company of a third assailant at about 7.00 p.m. on the material date. The incident occurred at a properly lit location. PW1 testified that the 1<sup>st</sup> appellant pierced him with a knife that he was carrying, while the 2<sup>nd</sup> appellant attacked PW2 (*his wife*). Soon after the attack the two victims screamed attracting the attention of Administration Policemen who rushed to the scene as the attackers were making their escape. The Administration Policemen pursued the attackers and arrested the two appellants as PW1 and PW2 sought treatment at the District Hospital. In the incident which lasted for about 30 minutes, the 1<sup>st</sup> appellant lost to the attackers a mobile phone, his ID card and a voter's card. PW2's testimony was similar to that of PW1. She corroborated his evidence that light from a nearby church provided adequate lighting for the two of them to clearly see and identify the appellants, stating also that the incident took about 30 minutes. She lost a leso to the 2<sup>nd</sup> appellant which was later recovered in his possession. The injuries inflicted on PW1 and PW3 were confirmed by the medical evidence adduced by Peter Muthee (PW3) of Nyahururu District Hospital. His testimony was that PW1 had a cut wound his nasal ream, tenderness and a bruise on the left leg. The examination of PW2 revealed tenderness of the neck and bruises on the head. APC Juma Samuel testified as PW4. He stated that, while on patrol around Olkalou area of Nyahururu in the company of one APC Lonyoki he heard

screams emanating from near the Independent Church. The two officers rushed to the scene, where they found PW1 and PW2 having been attacked, injured and robbed. They saw the three assailants escaping and pursued them. The appellants were arrested while their accomplice escaped. A blood stained knife was recovered on the 1<sup>st</sup> appellant. The 2<sup>nd</sup> appellant was found in possession of a leso which belonged to PW2. In their defence, the appellants merely denied having committed the offence.

In his judgment the learned trial magistrate found that the evidence of PW4 regarding the arrest and recovery of the bloodstained knife and PW2's leso corroborated the victims' evidence that the appellants were among the persons who attacked and robbed them. He held therefore, that there was sufficient evidence to conclude that the two appellants were connected with the robbery. He did not find any truth in the appellants' defence. While convicting the appellants the learned trial had this say of the appellants:

*“It is safe to assume that they were among the robbers but considering all the circumstances of this case I proceed to find them guilty of the lesser charge of robbery contrary to section 296(1) of the Penal code... and convict them accordingly on both counts.”*

In opposing the appeal the learned state counsel Mr. Njogu submitted that there was sufficient evidence for the trial court to convict the appellants of robbery with violence under section 296(2). However considering that they had withdrawn the appeal against the conviction the state opted not to apply for the enhancement of the sentence and left the matter to the court. From my re-evaluation of the evidence adduced against the appellants, I accept the State's submission that there was adequate and sufficient evidence upon which to convict the appellants under section 296(2). However the State having not pushed for an enhancement of the sentence I will leave matters as they are. Given that robbery under section 296(1) attracts a maximum sentence of life imprisonment, I am of the considered view that, given the circumstances of this case, the 7 years imprisonment terms in respect of the two counts herein, which were ordered to run concurrently, were quite lenient. I see no reason to interfere with the same. In the premises I find that the appeal fails and is hereby dismissed.

Dated signed and delivered at Nakuru this 8<sup>th</sup> day of October, 2009

**M. G. MUGO**

**JUDGE**