



REPUBLIC OF KENYA

IN THE HIGH COURT

AT NAKURU

Criminal Application 262, 263, 264, 267 & 272 of 2006

SIMON NGUGI NJOROGE.....1ST APPELLANT

SAMUEL MATHERI JOSEPHINE.....2ND APPELLANT

PETER MUTURI NJOROGE.....3RD APPELLANT

JOHN NDUNGU MATHENGE.....4TH APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(From original conviction and sentence in Criminal Case No.912 of 2005 of the Chief Magistrate's court at Nakuru – M. W. ONDITI, SRM)

JUDGMENT OF THE COURT

SIMON NGUGI NJOROGE, SAMUEL MATHERI NJOROGE, PETER MUTURI NJOROGE and JOHN NDUNGU MATHENGE, the appellants in these appeals were upon trial on a charge of robbery with violence contrary to **Section 296(2)** and assault causing actual bodily harm contrary to **Section 251** of the **Penal Code** convicted on both counts and sentenced to death on the first count and three years imprisonment on the second count. The trial magistrate ordered “Both sentences to run consecutively”. They have appealed against both those convictions and sentences.

The two star witnesses, PW1 and PW2, both confessed that they had not seen any of the appellants prior to the robbery. They claimed to have recognized them at the time of robbery but they did not give any

description of any of the appellants to the police or say what made them recognize the appellants. The police never held an identification parade and only showed the appellants to the witnesses at the police station and in court the two witnesses purported to identify the appellants. That is dock identification which is no identification at all. We therefore agree with both the state and accused's counsel that the trial court's finding that the two witnesses recognized the appellants was a grave misdirection. There was absolutely no evidence to support the conviction of the appellants on either of the two charges. Consequently we quash the convictions of the appellants and set aside the sentences against them. The appellant shall be set free forthwith unless otherwise lawfully held.

DATED and delivered this 19th day of November, 2009.

D. K. MARAGA

JUDGE.

M. G. MUGO

JUDGE.