

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU
Criminal Appeal Case 141 of 2007

FREDRICK KABUI NJAGI.....APPELLANT

VERSUS

REPUBLIC..... RESPONDENT

CONSOLIDATED

JOSEPH MUTHEE KANGAI.....APPELLANT

VERSUS

REPUBLIC..... RESPONDENT

JUDGMENT

These two appeals were consolidated as they arose from the same trial.

The appellants, Fredrick Kabui Njagi and Joseph Muthee were charged and tried and convicted on a charge of robbery with violence contrary to **section 296 (2) Penal Code**. They were sentenced to death as by law provided. Each filed separate grounds of appeal.

The appellants complained of unsatisfactory evidence of identification in difficult circumstances, conviction on evidence of single witness, that the defence was not considered, and that the identification parade was conducted contrary to rules.

When the appeals came up for hearing the appellants submitted to court written submissions and offered no other arguments.

However, the State Counsel addressed the Court and indicated that he was conceding to the appeals on the grounds that PW2, a child, gave sworn evidence without carrying out any preliminary inquiry as to capacity of the young child to give evidence

Further, the evidence of PW6 Albert Musyoki did not see the robbers as they had broken the hurricane lamp and they found them in darkness. But he says he identified the attackers when they entered. The State Counsel submitted that the language used during the proceedings is not disclosed from the stage of taking plea. It is not shown in which language the plea was taken. The evidence of PW3 is not indicated in which language it was taken.

The identification was conducted and yet the witnesses said they knew the suspects. This rendered the evidence worthless. Finally the State Counsel submitted that there were grave errors in the conduct of the trial and therefore he was not asking for a retrial.

We have examined the record. On the issue of the language the constitution grants an accused person rights to have the criminal proceedings conducted in a language that he understands **Section 77** thereof

grants the right for accused to be informed in a language that he understands the nature of the offence that he is charged with and that he shall be permitted without charge, the assistance of an interpreter if he cannot understand the language used at the trial.

The provisions of Criminal Procedure Code also entitles an accused to be assisted with interpretation of the proceeding if he does not understand the language of Court. This is under section 198 CPC. It is therefore important that the trial Court does indicate the language used in every trial.

We agree with the State Counsel that there are grave errors in these proceedings to the prejudice of Appellants. We therefore, allow the Appeal, quash the conviction and set aside the sentence of death passed on the appellants.

We order that the accused be set at liberty forthwith unless otherwise lawfully held.

DATED this 31st of July 2008

J. N. KHAMINWA

J. MAKHANDIA

JUDGE

JUDGE