

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
Criminal Appeal 120 of 2006

ANDREW EWATON.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

ANDREW EWATON (the Appellant) was with two others charged with three counts of capital robbery. In the alternative the Appellant was alone charged with handling stolen property contrary to **Section 322(2)** of the **Penal code**. He was convicted on counts one and two and sentenced to death. He has appealed against both the conviction and sentence. At the hearing on 3rd July 2007, Mr. Mugambi, learned state counsel, conceded the appeal on the ground that the Appellant's identification was in doubt and that the alleged stolen items that he was found with may very well have been his.

Having ourselves read the record we agree that the identification of the Appellant was not proper. The description of the Appellant was not given to the police and the marks the complainant said the Appellant has on his face were not specified. The Appellant maintained that the radio he was found with was his and he pointed to an identifying mark on it. He also said that the shoes he was found with were given to him by the complainant's son and that was not contested.

On these grounds we agree with Mr. Mugambi that the Appellant's conviction is on shaky ground and cannot therefore be allowed to stand. Consequently we allow this appeal, quash the conviction and set aside the sentence. The Appellant shall be set free forthwith unless otherwise lawfully held.

DATED and delivered at Nakuru on this 18th day of July, 2008.

D. K. MARAGA

JUDGE

M. MUGO

JUDGE