



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**  
**Criminal Appeal 149 of 2006**

**NATHAN MATUU MOCHENGO.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

**NATHAN MATUU MOCHENGO** (the Appellant) was with another charged with two counts of robbery with violence contrary to **Section 296(2)** of the **Penal Code**. He pleaded not guilty but after hearing before Senior Resident Magistrate at Molo he was convicted and handed down the mandatory death sentence. He has appealed against both the conviction and sentence.

At the hearing on 3<sup>rd</sup> July 2008, Mr. Mugambi, learned state counsel conceded the appeal on the ground that the Appellant's identification by the complainants cannot be relied upon as they did not give his description and PW3 and PW4 who said they identified him by his voice did not say how they were able to recognize his voice or for how long they had known him.

Mr. Nyamwange for the Appellant while entirely agreeing with the views of Mr. Mugambi added that the sufficiency or intensity of the light that enabled PW2 to identify the Appellant was also not given. He said PW3 and PW5 did not tell the police that they knew the Appellant or his co-accused as they later claimed in court and that the Appellant's alibi defence was for no good reason ignored.

On these grounds we agree with both counsel that the Appellant's conviction cannot be allowed to stand. We therefore allow this appeal, quash the conviction and set aside the sentence. The Appellant shall be released forthwith unless otherwise lawfully held.

DATED and delivered at Nakuru this 18<sup>th</sup> day of July, 2008.

**D. K. MARAGA**

**JUDGE**

**M. MUGO**

**JUDGE**