

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI

Criminal Appeal 73 of 2004

EVANS MAINA GICHOB I.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Appeal from the Original Conviction and Sentence in Criminal Case Number 1003 of 2003 in the Resident Magistrate's Court at Gichugu by S. K. Karos – R.M.)

J U D G M E N T

Evans Maina Gichobi the appellant herein was tried and convicted of the offence of Robbery Contrary to Section 296 (1) of the Penal Code by the Resident Magistrate Gichugu. He was sentenced to serve a prison term of 4 years. Being dissatisfied He has appealed against his conviction and sentence. In his petition of appeal the appellant has raised 3 main grounds which can be paraphrased as follows: -

That the prosecution evidence though circumstantial did not lead irresistibly to the guilt of the appellant. Secondly that the evidence of identification relied upon was not sufficient as the circumstances were not favourable for a positive identification and finally that the appellants *alibi* defence was not properly considered by the trial magistrate.

Learned Principal State Counsel Mr. Orinda has conceded that the evidence relating to identification was not satisfactory and that the appellant's conviction was therefore not safe

I have carefully reconsidered the evidence which was adduced in the lower court. The evidence implicating the complainant was only that of the complainant Ruth Wanjiru Kariako who maintained that she saw and identified the appellant as He robbed her. This witness did not however name the appellant as her assailant to P.W.2 Jamleck Gichobi Jacob who was the first person to run to her aid. The appellant is a grandson to the complainant and if she had indeed seen and identified him one would have expected her to say so at the earliest opportunity. The only source of light was said to be a lamp which the assailant knocked before He entered. It is evident that the lighting was not adequate and that is probably why the complainant was not so certain about her attacker as to be able to name him immediately.

I concur with the Principal State Counsel that the identification of the appellant by the complainant was doubtful and cannot be relied upon. Moreover, this being the evidence of a single identifying witness, the trial magistrate did not warn himself of the need to exercise caution nor did He subject the evidence to severe scrutiny.

I find that the evidence adduced was not sufficient to support the appellant's conviction. Accordingly, I allow the appeal, quash the conviction and set aside the sentence imposed on the appellant.

The appellant shall be set free unless otherwise lawfully held.

Dated, signed and delivered this 1st day of February 2007.

H. M. OKWENGU

JUDGE