



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CRIMINAL DIVISION**  
**(CORAM: OJWANG & DULU, JJ.)**  
**CRIMINAL APPEAL NO. 610 OF 2004**

**BETWEEN**

**PETER GATIMU KARIUKI..... APPELLANT**

**-AND-**

**REPUBLIC.....RESPONDENT**

***(An appeal from the Judgement of Senior Resident Magistrate Ms. Mwai dated 6<sup>th</sup> December, 2004 in Criminal Case No. 8299 of 2003 at the Kibera Law Courts)***

**JUDGEMENT OF THE COURT**

The appellant was charged in the trial Court with the offence of robbery contrary to s.296(2) of the Penal Code (Cap.63). The particulars were that, on 28<sup>th</sup> July, 2003 at Ongata Rongai township in Kajiado District within the Rift Valley Province, the appellant had acted jointly with another person while armed with a knife and clubs, and had robbed one **Mathew Kipkemboi Bungei** of a Siemens cellphone, a pair of shoes, an employment card, an Identity Card, and cash in the sum of Kshs.4,700 – all coming to a total value of Kshs.11,400/=; and that at, or immediately after the time of such robbery the appellant and his accomplice had wounded the said **Mathew Kipkemboi Bungei**.

The facts are that on 28<sup>th</sup> July, 2003, at about 9.40 p.m., the complainant (PW1) was walking home, from a bus stop at Ongata Rongai, when he met three people who were walking in the opposite direction. The appellant herein was one of the three, and he addressed PW1, saying “they had started their work.” The appellant looked at PW1 and told PW1 he recognised him as “the *Posta* person” (and indeed, PW1 works with Telecom Exchange, sometimes referred to as *Posta*). The appellant summoned his two friends to join him and PW1, and told PW1 they would do him no harm, since they had recognised him. However, the three demanded of PW1 Kshs.20/= for buying cigarettes. After he gave them the sum demanded, and started walking away, the appellant followed him and asked him to sell the appellant’s mobile phone for him, as some sort of broker. One **Muriithi** (since charged and convicted) and the appellant then took positions on both sides of PW1, and walked along with him. This was not by any means an innocent walk; for even as the two engaged PW1 on either side, there were accomplices stabbing PW1 from behind. They encroached on PW1 and extracted money from his pockets. The appellant now held PW1’s hands from the front, even as he was being stabbed with a knife, by the appellant’s accomplices. The attacking gang removed his shoes, and hit him so hard he fell unconscious. He only regained consciousness much later, while being taken to Kenyatta National Hospital. After treatment the

complainant reported the matter to the Police Station, and recorded a statement. He informed the Police that he had identified those who robbed him. On the basis of the information he gave, the appellant's accomplice on the night of robbery, one **Muriithi**, was arrested; and later when PW1 met the appellant near the Telkom Exchange where PW1 worked, the appellant took off. PW1 reported the matter to his work-mates and to the Police station. Later still, PW1 saw the appellant again and got him arrested, as he contrived to flee.

On cross-examination by the appellant, PW1 testified that he had once seen the appellant when the appellant had sought telephone-repair services from him, on behalf of the appellant's employer. PW1 came to know the appellant by face, but did not know him by name. PW1 reminded the appellant that on the material night, it is he, the appellant, who avowed knowing PW1 and declared that he and his accomplices would do no harm to PW1.

PW2, **Police Constable Joseph Muga**, who was attached to the Ongata Rongai Police Station, testified that PW1 had reported to him at about 9.00 a.m. on 29<sup>th</sup> July, 2003: that he (PW1) had been robbed the previous night as he walked home. PW1 reported that he had been assaulted and robbed by a gang of about five men, robbed of Kshs.4,700/= and a telephone. PW2 booked the report, and issued the complainant with a P3 form for medical reporting on the alleged injuries. This form was later handed back to PW2, duly filled in by a doctor. The complainant had informed PW2 that he could identify two of those who had robbed and assaulted him. PW2 advised the complainant to keep him informed if he managed to trace any of the members of the said gang of attackers. Subsequently, the complainant alerted him and he effected the arrest of one of the robbery-suspects, at a butchery at Ongata Rongai. This suspect (**Muriithi**) was charged in Court, tried and convicted. Then, several months later, the complainant reported to PW2 that he had seen another participant in the night-robbery in question. PW2 went along with the complainant, and the suspect (the appellant herein) was arrested, and charged in Court.

PW3, **Dr. Zephaniah Kamau**, testified that he is a Police surgeon, based in Nairobi. He had examined the complainant, in connection with an assault incident. PW3 found the complainant to have a red eye, and haematoma below the left eyelid. P1's right side of the face was swollen, and he had stitched wounds on the right ear lobe. PW3 examined PW1 three days after the alleged assault. He found that the injuries were caused by both blunt and sharp objects, and assessed the degree of injury as harm. PW3 duly signed the P3 form which he now produced, as Exhibit 1.

The appellant in his unsworn defence said he worked as a house-boy and lived at Ongata Rongai. He said he had not been involved in the offence charged, and that the charges were a fabrication.

The evidence on record was analysed by the learned trial Magistrate, who proceeded as follows:

***The facts which are not disputed as set out by the complainant herein, point to the offence of robbery with violence. The complainant was attacked, and actual violence visited on him. He [sustained] injuries, and this evidence is supported by the medical doctor's testimony where he confirmed that the complainant [sustained] several injuries on his body. The complainant said that he was robbed by more than one person and these people were armed with offensive weapons. Thus the offence of robbery with violence is clearly established. The accused however denies being one of the robbers. The complainant's evidence however, is that he was able to identify the accused; that the accused was known to him physically. He had seen [the accused] before. It is actually the accused who spoke to the complainant and said he knew him as the Posta man. It also seems that this incident [progressed over some] time; the complainant conversed with his assailant and they even walked together as they talked. He even gave them Kshs.20/= when they asked for money for cigarettes. This is [proof] that the complainant had time to see these people and was therefore not only able to identify but to recognise the two people who he already knew. Indeed, even when he went to report the matter he told PW3 that he was able to recognise the robbers."***

From the evidence on record, we feel certain that, in the foregoing excerpt, the learned Magistrate has

professionally and competently set out the forensic desiderata that accurately marked out the appellant herein as the robber who had tormented and robbed the complainant on the material day. The complainant recognised the appellant whom he had dealt with before, on a telephone-repair question; the complainant walked abreast of the appellant and the appellant's accomplice over some distance, as they spoke to him, and as he continuously perceived them by the sense of *hearing*; the appellant well knew the complainant, even by the complainant's place of work; the complainant by his very first reports – which therefore, registered his honest and uncoloured perceptions and recognitions – indicated that he had some familiarity with two of those who robbed him, and the appellant herein was one of them; the complainant had quite correctly identified an accomplice of the appellant, one **Muriithi**, who was earlier on tried and convicted by a Court of law; and the complainant equally well recognised the appellant when he later saw the appellant, and rightly reported to the Police officer (PW2) who then arrested the appellant; a clear conscience of guilt had visited upon the appellant who, whenever he saw the complainant approaching, in the aftermath of the robbery attack, would apparently seek an escape route. We hold all these instances to constitute corroborative circumstances, which go to reinforce, and to render quite safe the identification and recognition of the appellant as the culprit who, together with others, assaulted and robbed the complainant on the material night. This, truly, in our view, amounts to proof-beyond-reasonable-doubt, and we must, thus, hold that the appellant had been quite properly convicted on the charge brought against him.

We dismiss the appellant's appeal; uphold the conviction entered; and confirm the sentence of death meted out by the learned Senior Resident Magistrate on 6<sup>th</sup> December, 2004.

***Orders accordingly.***

**DATED and DELIVERED at Nairobi this 14<sup>h</sup> day of June, 2007.**

**J.B. OJWANG**

**JUDGE**

**G.A. DULU**

**JUDGE**

**Coram: Ojwang & Dulu, JJ.**

**Court Clerks: Huka**

**Erick**

**For the Respondent: Ms. Gateru**

**Appellant in person**