



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT MOMBASA**

**Criminal Appeal 262 of 2005**

**(From Original Conviction and Sentence in Criminal Case No. 1553 of 2004 of the Chief Magistrate's Court at Mombasa: T. MWANGI – S.R.M.)**

**DOMINIC SANYA WANYAMA.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

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**J U D G E M E N T**

The Appellant was upon trial on a charge of capital robbery convicted and sentenced to death. He has appealed against both that conviction and sentence. It was alleged that on 16<sup>th</sup> May 2004 at about 12.40 a.m. with others not before court the Appellant robbed Gilbert Ngeti Mwambamba (the complainant) of cash Sh.4,350 and an Omax watch valued at Sh.450/-.

At the time of robbery the complainant was with his workmate, Kenneth Eric Idambo PW2. The two who had only known the Appellant by appearance purported to identify him at an identification parade later held at Nyali Police Station. That parade was, however, flawed as the Appellant was, contrary to the Force Standing Orders, placed among seven people and not eight as required.

We agree with Ms. Mwaniki, learned State Counsel, that the Appellant's conviction was based solely on that flawed identification parade evidence. In the circumstances his conviction cannot stand and we accordingly quash it, set aside the sentence and order that the Appellant be set free forthwith unless otherwise lawfully held.

**DATED** and delivered this 19<sup>th</sup> day of September 2007.

L. NJAGI

JUDGE

**D.K. MARAGA**

JUDGE