



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAKURU  
Criminal Appeal 260 of 2002**

**STANLEY KARANJA MWANGI.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**(From original conviction and sentence in Criminal Case No.1118 of 2002 of the S.P.M.'s  
Court at Naivasha M.M. Muya, Esq., (S.P.M.)**

**JUDGMENT OF THE COURT**

The Appellant was convicted by the Senior Principal Magistrate, Naivasha, of the offence of Robbery with Violence contrary to Section 296(2) of the Penal Code. After a full trial the Appellant was convicted of the four Counts and sentenced to suffer death in respect of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Counts and one year Imprisonment in respect of the 4<sup>th</sup> Count and also the sentence to run concurrently.

The particulars of the charges that lead to the conviction can be briefly stated:

“On the 3<sup>rd</sup> day of May, 2002 at Murungaru Trading Centre in Nyandarua District within the Central Province the Appellant jointly with another not before Court armed with a dangerous weapon namely, home made gun robbed Ann Wanjiru Kshs.3,300/- and immediately after the time of the robbery wounded the said Ann Wanjiru Maina.

In the Second Count, the Appellant was charged with the offence of Robbery with Violence in that on the same day and place, he robbed Gerald Mwangi Gichuru of cash of Kshs.1,500/-.

In the third Count on 3<sup>rd</sup> May, 2003 Appellant was Charged with the offence of Robbery with Violence in that on the same day and place he robbed Martha Mwangi of Kshs.300/- and in the 4<sup>th</sup> Count the Appellant is charged with being in unlawful possession of military stores, contrary to section 203(4) of the Armed Forces Act.”

The evidence that led to conviction can be summarised as follows:-

**On the 3<sup>rd</sup> day of May, 2002, at around 9.00 p.m. at Murungaru trading Centre, there was a spate of robberies. It was the prosecution’s case that the Appellant with two other persons while armed with a home made gun, axes and clubs, attacked several bars, including “Jogoo Bar,”**

**“Check Point Bar” and “Kenya Njeru Bar”. In all these premises, they stormed in with a show of force brandishing the above mentioned weapons and subjected the patrons into submission, beat those who indicated any sign of resistance, ransacked their pockets and stole some drinks from the Centre.**

At the Jogoo Bar, evidence was given how they slapped the bar owner and the appellant took the keys to the cash box and removed therefrom Kshs.3,300/- PW1 was able to identify the appellant because of the lights that she said were on. She testified the appellant was a tall brown man who was clad in military uniform.

At the same Jogoo Bar there were other patrons whose testimony was the same as that of PW1, they are recorded in the proceedings as PW2 and PW3. They also said they were robbed of Kshs.1,300/- and Kshs.1,050 respectively. They too identified the Appellant as the thug who was armed with a rifle and was wearing the military uniform. The identification was done on the following day at the Administration Police Offices.

At the Check Point Bar, PW4 (the proceedings erroneously indicated this as PW6 but this is a typing error which does not affect the substance), told the court how three men brandishing crude weapons attacked him and his customers and stole Kshs.500/-. They also attacked his customers and ransacked their pockets. PW6 was able to identify the Appellant on the following day and he described him as the one who was tall and brown and wearing military uniform.

PW6 is the proprietor of Kenya Njeru Bar and she testified of how at about 9.30 p.m. at Murungaru Shopping Centre on 3<sup>rd</sup> May, 2002, some three men forcefully opened the door of her bar, kicked and opened it with force and she was robbed of Kshs.300/- and bottles of alcohol. There was light from electricity and this witness told the court that she was able to identify the Appellant as a tall brown man who was wearing the military uniform. She identified the Appellant the following day at the Administration Police Line.

The other crucial evidence was that of PW7, A.P.C Boniface Mutiro who arrested the Appellant from a certain house within the Centre. After the report of the robberies was made, the Administration Police Officers decided to patrol the area and they were led to the house of PW9 where they found the appellant who was in possession of a green paper bag, which contained an imitation firearm, one firearm and military uniform. The Appellant could not explain how he came into contact with those items and he was arrested and taken to the

A.P lines. PW1, PW2, PW3, PW4, PW6 all identified the Appellant, the uniform and the home made rifle as the ones that the appellant was wearing and the rifle as the one that was used to terrorise them. Respectfully the evidence by PW9 was clear that the green paper belonged to the Appellant and he was arrested with it in his house.

When put to his defence the Appellant stated that he comes from Kabugi Scheme and he had on 3.5.2002, gone to Ndunyu Njeru to seek for a Veterinary Officer and when he was told the officer was away he proceeded to a "changaa" drinking den where he was arrested on a trumped up charges. He accused the arresting officer of having had a grudge against him as they had quarreled previously. In convicting the Appellant the Learned trial Magistrate stated inter alia:-

**"The witnesses were emphatic that they saw three men but the one they saw clearly and identified is the 1<sup>st</sup> Accused who is a tall brown man and who was the one armed with what they thought was a rifle as was clad in military uniform. They told the court that they did not clearly identify the other two but it had been said that the men had been seen in the company of the 2<sup>nd</sup> accused who is a local youth. When the accused No.1 was arrested at a local changaa drinking den he was allegedly found with a green polythene bag which was found to contain the military uniform and the home made gun.**

**Were these witnesses telling the court lies?**

**I had the feel of this case and I am satisfied that the witnesses were telling the court the truth.**

**The 1<sup>st</sup> accused was clearly seen by the Witnesses at the scene of the crime. They gave the Police the**

**description of the attackers and the two were arrested in the**

**morning. I am alive to the fact that the Police should have conducted an identification parade but unfortunately, the accused persons were arrested by Administration Police Officers who were not conversant with such legal requirements. Is the failure to conduct an identification parade in this case fatal to this case? The answer is NO.**

**The reason being that the 1<sup>st</sup> accused was found carrying military uniform in a polythene paper bag.**

**The witnesses had told Police that one of the attackers was wearing military uniform. Also recovered from the 1<sup>st</sup> Accused was a homemade gun. The witnesses had also told Police that the men who attacked was the one**

**armed with a rifle. They could have easily mistaken it as a genuine one. They had no time to ascertain whether it was a genuine one or not. I find the evidence against the 1<sup>st</sup> Accused in this case to be overwhelming and I convict him accordingly on the 4 Counts. The evidence against the 2<sup>nd</sup> accused is very scanty and cannot sustain a conviction. He is acquitted under Section 215 of the Criminal Procedure Code.**

**The 1<sup>st</sup> Accused is convicted under Section 215 of the Criminal Procedure Code**

**Accordingly.”**

The Appellant being dissatisfied with his conviction and sentence has appealed to this court and the main ground of appeal was that the evidence of identification was unsatisfactory in that the prevailing conditions were not favourable. Furthermore no identification parade was conducted.

The second ground was that the Appellant was accused of having a home made riffle and yet there was no Ballistic evidence that was called to confirm. The Appellant also contended that there were inconsistencies in that some witnesses described the weapon as a pistol while others referred to it as rifle. The other issue raised by the Appellant was that there was no compliance with the mandatory provisions of the law in that the charge sheet was never read to him.

On the part of Mr. Koech, Learned Senior State Counsel, he supported both the conviction and sentence and implored upon this court to uphold the Judgment as being watertight.

We have carefully reconsidered the evidence, and evaluated it ourselves as indeed we should as the first appellate Court.

We are however, satisfied that there was overwhelming evidence of identification of the Appellant by PW1, PW2, PW3, PW4 and PW6 who were all victims of the spate of robberies.

They identified the Appellant on the following day and were also able to identify the military uniform and the home made gun that were found in his possession.

In this regard, we find the minor discrepancies about the description of the riffle and pistol not fatal. Similarly, although no identification parade was conducted we agree with the finding by the Learned Magistrate that failure to conduct an identification parade in this case was not fatal as the Appellant was found having military uniform in polythene bag and could not give an explanation about them. Moreover all the witnesses could identify the Appellant due to his uniform, and physical features, all the witnesses on identification said they were able to see the Appellant on the night of the attack.

As regards the complaint that the charge sheet was not read to the Appellant, the original lower court record is clear that on 23/5/2005, the charge was duly read to the Appellant and therefore nothing turns on

this ground. Similarly we do not think that failure to call the Ballistic Expert was fatal as it was realized the weapon was a home made gun.

In view of the foregoing, we are satisfied that the Appellant's guilt was proved beyond any reasonable doubt. We find no merit in this appeal and the same is dismissed.

Judgment Read and Signed on 3<sup>rd</sup> March, 2006.

**MARTHA KOOME**

JUDGE

**3.3.2006**

**D.K. MUSINGA**

JUDGE

**3.3.2006**