



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

**CRIMINAL APPEAL 222, 224, 225 & 226 OF 2004**

*(From original conviction and sentence in Criminal Case No.2709 of 2003 in the Chief Magistrate's Court at Nakuru, by Mrs S. Muketi, P.M.)*

**JACKSON EKAL.....1<sup>ST</sup> APPELLANT**

**JOHN EMOSIL NACHOBOLI.....2<sup>ND</sup> APPELLANT**

**PETERSON LOGILAI.....3<sup>RD</sup> APPELLANT**

**JOSEPH EMOSIL EKIRU.....4<sup>TH</sup> APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

The appellants were charged with several counts of robbery contrary to **Section 296(1)** of the **Penal Code**. In the first count, the particulars of the offence were that on the night of 20<sup>th</sup> and 21<sup>st</sup> December, 2003 at Pwani trading centre, Naishi within Nakuru District, jointly and armed with dangerous weapons namely clubs, simis, kitchen knives, pangas and sharpened sticks, robbed Bisharu Osman, a watchman of Peter Maiba cash Kshs.17,000/- and an assortment of shop goods all valued at Kshs.74,615/- and at or immediately before or after the time of such robbery threatened to use violence to the said Bisharu Osman. The said Bisharu Osman was also a watchman guarding the shops of Peter Kanyi and John Mburu Gichie in the same trading centre of Naishi and the appellants were also alleged to have broken into those shops and stolen therefrom other sums of money and assorted shop goods.

After a full trial, each appellant was convicted and sentenced to serve eight years imprisonment. The prosecution evidence against the appellants briefly stated was as follows:-

On 20/12/03 at about 1.15 a.m. robbers attacked Pwani trading centre. One of them had a panga and another one an iron bar. They accosted **PW1, Bisharu Osman Godana**, a watchman and told him to go away or they would kill him. He ran away and blew a whistle. Some of the shop owners showed up and it was realised that several shops had been broken into and goods stolen. A report was made at Njoro Police Station. PW1 said that on 22<sup>nd</sup> December 2003 at about 6.00 a.m. the first, second and third appellants were seen carrying some goods in a paper bag. The third appellant dropped his luggage and

ran away. That evidence was corroborated by **PW6, Inspector Samuel Kimathi**. He said that they arrested the three appellants and recovered some goods which were positively identified by the shop owners as being among the things that had been stolen from their shops.

The first and the fourth appellants led the police to the place where the other stolen goods had been hidden. None of the appellants gave any reasonable explanation for their possession of the stolen items.

In their defences, all the appellants denied any involvement in the said robberies. The trial court held that the doctrine of recent possession was applicable to all the appellants.

All the appellant raised more or less the same grounds of appeal. They argued that there was no sufficient evidence to warrant their conviction as there was no proof that they had been found in possession of the stolen items.

During the hearing of the appeals, the fourth appellant told the court in his written submissions that he had decided to abandon his appeal but urged that he be discharged on humanitarian grounds as he was sick. The other appellants made oral submissions.

In response, Mr. Koech, state counsel, urged the court to uphold the convictions and sentence as there was sufficient evidence that the appellants had been arrested in possession of the stolen goods shortly after the robbery was committed.

I have carefully considered the evidence that was adduced by the prosecution as against the appellants before the trial court as well as the defences advanced by each of the appellants as well as the submissions that were made during the hearing of the appeal. None of the appellants was identified by PW1 as having been at the scene of the robbery on the material night. PW1 said that he could not identify any of the appellants as they had covered their faces. When he accompanied PW2 and PW4 to Naishi police station a few hours after the robbery, together with PW6 they arrested the appellants as they carried some of the stolen goods. In the absence of any reasonable explanation as to how they had come about the said items, the trial magistrate was right in convicting them on the doctrine of recent possession. In **MATU VS REPUBLIC [2004]1 KLR 510** the Court of Appeal referred to that principle and cited **R. V LOUGHIN 35** Cr. App. R 69 where it was held that:-

*“If it is proved that premises have been broken into and that certain property has been stolen from the premises and that very shortly afterwards, a man is found in possession of that property, that is certainly evidence from which the jury can infer that he is the house breaker or shopbreaker”.*

Applying the above principle, I find that the appellants were properly convicted and therefore dismiss their appeals and uphold their conviction and sentence.

DATED, SIGNED AND DELIVERED at Nakuru this 8<sup>th</sup> day of May, 2006.

**D. MUSINGA**

JUDGE

**8/5/2006**

Judgment delivered in open court in the presence of the appellants and Mr. Gumo for the state.

**D. MUSINGA**

JUDGE

**8/5/2006**