**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT ELDORET**
**CRIMINAL APPEAL NO. 10 OF 2004**

**From Original Conviction and Sentence in Criminal Case No.529 of 1999 of the Principal Magistrate's Court at Kapsabet: F. A. Mabele, Esq, P.M. dated 13/2/2004**

**WICLIFF KISANYA RUSIGI……APPELLANT**

**V E R S U S**

**REPUBLIC …… RESPONDENT**

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

WICLIFFE KISANYA RUSIGI, was originally charged with the offence of robbery with violence, contrary to section 296(2) of the penal code

The particulars of the offence were that on the 24th day of April, 1999 along Nandi Hills / Lessos road near Chepkunyuk secondary school in Nandi District within the Rift valley Province, being armed with dangerous or offensive weapons namely rungus, jointly with another not before court, he robbed Wilson Kiplagat Lelei of his bicycle make phonex frame, No. NK 708166, 5 breads, one dozen of cigarettes (rocket) and cash Kshs. 200/= all valued at Kshs. 6,800/= and at the time of such robbery, wounded the said Wilson Kiplagat Lelei.

After a full trial, he was convicted as charged and sentenced to suffer death.

Being aggrieved by the conviction and the sentence, he has now preferred this appeal which is based on several grounds.

*1. THAT the learned trial Magistrate erred in law and fact by convicting him on the basis of positive identification yet no identification parade was conducted in this matter.*

*2. THAT the learned trial Magistrate misdirected himself when he relied on evidence of a single witness.*

*3. THAT the learned trial Magistrate erred in law and fact by failing to appreciate that the investigations officer did not testify.*

*4. THAT the prosecution did not prove its case beyond reasonable doubt.*

*5. THAT his defence was disregarded without advancing any cogent reasons.*

*6. THAT the trial magistrate erred in law and fact by shifting the onus of proof to him.*

We have re-evaluated the evidence on record from which it is clear that the appellant together with others, while armed with dangerous weapons robbed PW4 of a bicycle and other items as named in the charge sheet, and wounded the complainant at the material time. The offence was committed at 6 p.m. at a time when there was sufficient light. It is also clear that he was positively identified. Further, it is also clear that PW2 corroborated PW4's evidence so did PW3 and PW5 all of who saw the appellant with the stolen items after a complaint was made within seconds of the attack and robbery. They all had a clear view of him and positively identified him after a chase using a motor vehicle.He was arrested the following morning. PW1 produced a P3 report and testified that complainant had sustained injuries, which were classified as 'harm'.

We are inclined to agree with the respondent, that though judgment was taken by a Police Sergeant, it was not fatal to the proceedings, as all other proceedings had been conducted in the presence of a qualified officer.

We find that not only was his defence considered by the learned trial Magistrate and declared unreliable, but that at no time was the burden of proof shifted to him. In the circumstances, the appeal, which lacks in merit is hereby dismissed and the conviction and sentence are upheld.

Dated and Delivered at Eldoret this 31st January 2005

**JEANNE GACHECHE**

**JUDGE.**

**GEORGE DULU**

**JUDGE.**

Delivered in the presence of: