



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**CRIMINAL APPEAL 783 OF 2002**  
**BONIFACE MUNGAI MACHANGA.....APPELLANT**  
**VERSUS**  
**REPUBLIC.....RESPONDENT**

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

BONIFACE MUNGAI MACHANGA was found guilty and convicted on one count of ROBBERY WITH VIOLENCE contrary to Section 296(2) of the Penal Code. He was sentenced to death as mandatorily provided in the law. He now appeals against the conviction. The facts of the case are very simple. ABRAHAM, PW1, who is the Complainant in this case was going home from a hotel at 9.00 p.m. when he heard a man running towards him from behind. The man was issuing a command that ABRAHAM should be held and robbed because he had money. ABRAHAM decided to run towards the stage which was nearby and well lit with lights from a petrol station about 50 metres away. He also hoped to find help at the stage. As he approached it, the man from behind him caught him and held him firmly. ABRAHAM saw 2 other people emerge from the sides at the stage, who then ransacked him. They tore his shirt, coat and trouser pockets as they stole his money. They tore at his wrist watch hurting his hand. Just then, two people came to his rescue, IP MURAGE and MR. OGETO who were PW2 and PW3, respectively.

As the accomplices ran, ABRAHAM clung onto the Appellant who had been holding him. The Appellant was then arrested and later charged. The Complainant realized later that he knew the Appellant. In the Appellant's unsworn statement, he denied having committed this offence. He said that he had gone to speak to three people at the stage when the complainant went there and grabbed him claiming he had stolen from him.

The Appellant raised five grounds of appeal which we summarized into two. One, that the evidence of identification by PW1, PW2 and PW3 was made under difficult circumstances. Two, that the learned trial magistrate rejected the Appellant's defence without giving reasons for doing so.

We have carefully re-evaluated the evidence adduced before the trial court as is our duty to do, as the first appellate court. The Appellant contended that he was not one of those who robbed the Complainant because by the time he reached the Complainant, he had already been robbed. He also contended that the Complainant's evidence that three people including the Appellant robbed him was contradicted by PW2 and PW3 who saw three men running away and the Appellant on top of the Complainant.

MISS NYAMOSI, learned counsel for the State did not agree with the Appellant. She submitted that the prosecution had proved that the Appellant, in company with others attacked and robbed the Complainant.

That the others managed to escape but the Complainant held on to the Appellant until PW2 and PW3 went and apprehended him.

The evidence adduced by the Prosecution is very clear. ABRAHAM said that a man, whom he later realized was the Appellant, and whom he knew as a tout, ran behind him as he stepped out of a hotel. The Appellant was shouting to accomplices, who later emerged from the sides of the stage to hold and rob the Complainant because he had money. In addition to those words, the Appellant was the first to hold the Complainant before his accomplices emerged. After he was robbed, the Complainant held onto the Appellant until some other people went to his rescue. The Appellant's role in this offence was very clear. The words he spoke and the action he took both prove that he was acting in concert with those who robbed ABRAHAM. As opposed to the Appellants contention, it was he, the Appellant who first held the Complainant before his accomplices robbed him. Both IP MURAGE (PW2) and MR. OGETO (PW3) witnessed the robbery and saw the Appellant on top of the Complainant, as three other accomplices ran off. We are satisfied that the words and actions of the Appellant at the scene of the robbery all prove beyond any doubt that he acted with one common intention, which was to rob the Complainant, on the evening in question.

As to the circumstances of identification being difficult, the Appellant was held by the Complainant, as one of those who robbed him, and in the course of the robbery. PW2 and PW3 saw very well the last part of the robbery, with the Appellant on top of the Complainant just before his accomplices ran away. The Complainant and PW3 MR. OGETO both described the stage where the robbery took place as well lit with lights emanating from a petrol station which both witnesses estimated as being about 50 meters away. That evidence should be considered together with the fact that from the time the Complainant was being robbed to the time PW2 and PW3 came to the scene, the Complainant held onto the Appellant. There is no doubt whatsoever, in those circumstances, that the Appellant was one of those, who with others who escaped, attacked and robbed the Complainant. We find that the lighting at the scene of the crime was quite good and that in any event the Appellant got no opportunity to leave the Complainant during and after the robbery in question. The Appellant's identity is therefore not in doubt and his involvement in this offence is crystal clear.

The Appellant had contended that there was inconsistency in the number of people who robbed the Complainant. It is true that the Complainant ABRAHAM saw only the Appellant and two others while PW2 and PW3 saw three people excluding the Appellant. We do not find this a contradiction. The Complainant was grabbed by the Appellant and as he struggled with him, he was robbed by the Appellant's accomplices. Since the Complainant was the one surrounded, he was not in a very good position to see all those involved. PW2 and PW3 on the other hand saw the episode from a distance away. Their view of the scene of crime was superior to that of the Complainant. The fact that there were four and not three men who robbed the Complainant does not affect the prosecution case, neither does it prejudice the Appellant in any way.

On the issue of the Appellant's defence not being given due consideration MISS NYAMOSI submitted that the learned trial magistrate took great consideration of the Appellant's defence in his judgment. She further submitted that the learned magistrate was right to find that the defence did not cast doubt on the prosecution case. At J4, the learned trial magistrate observed;

"I have of course had regard to his defence but I find it desperate in the fact of the overwhelming case by the prosecution. The Complainant and PW3 had no such grudge against him. The accused was not chased as to be mistakenly arrested. He had pinned down a man who refused to release him. He was only picked off by the police officer and the security man. I therefore reject his defence as unpalusible."

We agree with the learned trial magistrate. We also find that the learned trial magistrate gave due consideration to the Appellant's defence, and that he analysed it extensively before he rejected it as implausible. We agree that from the evidence before court, the Appellant was arrested red-handed playing his role in the robbery, and at the locus in quo. The learned magistrate's finding was correct and could not therefore be faulted.

Having considered this appeal, we find that the evidence adduced against the Appellant was overwhelming and that the conviction was safe. Accordingly we confirm the conviction and the sentence.

The fate of this appeal is that it fails and is therefore dismissed.

**Dated at Nairobi this 2nd day of June 2005.**

**LESIT, J.**

**JUDGE**

**F. A. OCHIENG'**

**JUDGE**