

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

APPELLATE SIDE

CRIMINAL APPEAL NO. 240 OF 2003

(From Original Conviction and Sentence in Criminal Case No. 247 of
2003 of the Senior Resident Magistrate's Court at Lamu J.D.C.
Kombe Esq., Senior Resident Magistrate)

JAMES MOHAMED MUYA APPELLANT

Versus

REPUBLIC RESPONDENT

J U D G M E N T

JAMES MOHAMMED MWOYU alias "J" and OMAR ALI HIRBE, the Appellants, were charged before the Senior Resident Magistrate at Lamu with two counts of robbery with violence contrary to section 296(2) of the Penal Code. The particulars of the first count were that on the 26th day of May 2003 between 5.00 p.m. and 7.00 p.m. at Ukangawati forest, in Mpeketoni Location in Lamu District within Coast Province they jointly robbed Paul Kimani of a bicycle valued at Sh. 6,000/= and at or immediately before or immediately after the time of such robbery murdered the said Paul Kimani. The particulars of the second count were that on the same day and at the same time and place they robbed Joseph Ngige Gigua of a bicycle also valued at Sh. 6,000/= and that at or immediately before or immediately after the time of such robbery murdered the said Joseph Ngige Gigua. When the charges were read to them they admitted them and after admitting the facts read out to them they were convicted on their own plea of guilty and sentenced to death. They have now appealed against both the convictions and sentence on the ground that their pleas were not unequivocal.

At the hearing of the appeal Mr. Monda, learned State Counsel, rightly in our view, conceded the appeal as that the plea was equivocal. In capital offences like these, when accused persons admit the offence, it is incumbent upon the trial court, before entering a plea of guilty, to warn the accused of the consequences of such plea. If possible, after being warned, the accused person should be let to sleep over the matter to be sure that his is not a rush decision and that he fully understands the gravity of the charge and the sentence to be meted out after a plea of guilty is entered. If, however, after the warning has been given and where necessary time given to the accused to think over the matter, and he comes back and says he wishes to plead guilty, then the court may proceed to enter a plea of guilty after the facts are read out and admitted.

No such warning was given in this case and we agree with Mr. Monda that the Appellants' pleas cannot be said to be unequivocal. Consequently we allow this appeal quash the convictions and order that the Appellants, who have no objection to a retrial and given the circumstances of the offences, be retried before another magistrate of competent jurisdiction. We direct that this case be mentioned before the Chief Magistrate of Malindi on the 9th August 2004 for direction on the retrial.

DATED and delivered at Mombasa this 20th day of July 2004.

J. KHAMINWA

JUDGE

D.K. MARAGA

AG. JUDGE