

of the name Mary and the house bursting into flames. Secondly I find that the voice identification was not sufficient for the court to find a conviction upon. In the case of **KARANI VS. REPUBLIC 1985 KLR 290**, the Court of Appeal held that identification by voice nearly always amounts to identification by recognition however, one must be taken to ensure that the voice is that of the appellant. Further to that in the case of **JOSEPH LEBOI OLE TOROKE V. REPUBLIC CR. APP. 204/1987** the Court of Appeal relied on the case of **REPUBLIC V. TUBLIBULL 1976 ALL EA 549 PAGE 552** where it was held

“Recognition may be more reliable than identification of the stranger; but even when the witness is purporting to recognize someone whom he knows, jury should4 be reminded that mistakes in recognition of close relatives and friends are sometimes made”

I find the words uttered that is ‘Mary’ to be too fewer to enable one recognise another’s voice and there is a high likelihood of mistaken identity.

It was not clear where the appellant was arrested or when. I find that whereas the appellant may have been a prime suspect, the evidence of recognition is shaky and not reliable. The court should have given the appellant the benefit of doubt and acquitted him. The conviction is unsafe. It is quashed and sentence is set aside. The appellant is set at liberty forthwith unless otherwise lawfully held.

Dated, read and delivered at Machakos this 19th day of October 2004.

Read and delivered in the

Presence of

R. V. WENDOH

JUDGE