

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAKURU

CRIMINAL APPEAL NO.392 OF 2000

**(From original conviction and sentence in Criminal
Case No.1831/2000 of the Senior Principal Magistrate's
Court at NAIVASHA – M.M. MUYA(S.P.M.)**

ANTONY NGUGI NJOGU.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

The Appellant ANTHONY NGUGI NJOGU has appealed against conviction and sentence imposed by the SPM'S Court Naivasha in Cr. Case No.1831/2000. He had been charged with the offence of ROBBERY WITH VIOLELNCE contrary to Section 296(2) of the Penal Code.

His main ground of appeal is that the evidence adduced before the court was insufficient.

The Learned State Counsel does not support the conviction. He submitted that the evidence of identification through recognition was not good because incident occurred at night. Further that leather jacket with which Appellant was arrested and identified with was not properly identified.

The court based the conviction of the Appellant on the evidence of identification by PW2 and PW3. At page 2 of the Judgment of the Court it is stated:-

“However, I find the circumstances surrounding this case afforded a good opportunity to identify the Accused. PW1, PW2 and PW3 clearly told the court that they were able to identify the Accused from his face, and the clothes he was Wearing. The following day when he was Arrested he was found wearing the leather Jacket he was wearing the previous night.”

That is not a true account of the evidence adduced before the court. PW1 did not identify the Accused at the scene and he never claimed he did both in evidence in chief and in cross-examination. PW2 said that she did not see his face but had seen the leather jacket and handbag he had. She identified them as pexh.1 & 2.

PW3 was not clear, he claimed he saw the Appellant without disclosing which part of him he saw. He identified pexh1 & 2 as jacket and bag he had at time of the offence.

The bag and jacket were not identified in any way as those that the Appellant allegedly had. None of these two witnesses expressly stated why they believed that the two items were the ones they had seen the night before. The evidence of these two witnesses was too casual and the court ought to have exercised caution before relying on it to convict the Appellant. That was the most important because the incident took place at night and none of the witnesses said they saw the face of the Accused or said the amount of lighting in the room under which they identified the Appellant. The court was told that the Appellant lived with his brother. The police and Complainant claim they followed foot steps from the scene to the house where the Appellant was found. No evidence was adduced to show what led the witnesses to believe that those foot prints were for the robbers and not any other person. The prints were not even described. Taking into account incident was at night and arrest was effected next day, it was necessary for the court to be convinced that the prints were for the robbers.

I find the conviction in this case was unsafe and should not be allowed to stand.

I allow the appeal, quash the conviction and set aside the sentence. The Appellant should be released unless otherwise lawfully held.

Dated and delivered at Nakuru this 11th day of March, 2003.

JESSIE LESIIT

JUDGE