

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL DIVISION
CRIMINAL APPEAL NO. 1128 OF 2001

**From Original Conviction and Sentence in Criminal Case No. 535 of 2001
of the SP Magistrate's Court at Kibera.**

NELSON MAINA WAFULA.....APPELLANT
VERSUS
REPUBLIC.....RESPONDENT

CONSOLIDATED WITH
CRIMINAL APPEAL NO. 1129 OF 2001

BERNARD MBUCCHE SAFARI.....APPELLANT
VERSUS
REPUBLIC.....RESPONDENT

JUDGMENT

These appeals were consolidated. The two appellants were convicted of the offence of robbery with violence c/s 296(2) of the Penal code and sentenced to death.

When the appeals came up for hearing on 1st April, 2003, the learned counsel for the Republic conceded the same. Consequently, having agreed with the learned counsel for the Republic, we set the appellants free and reserved our reasons for so doing.

The offence charged was committed at night. The conviction was based on the evidence of identification by a single witness. The complainant is said to have been aided by the lights of his car to identify the appellants.

The intensity of those lights was not known. There was no evidence that connected the two appellants upon which to determine any common intention.

There were no recoveries made from either of the two appellants that were incriminating.

We agree that the conviction based on the shaky evidence of pw1 was most unsafe.

For those reasons the appeals were allowed.

Dated and delivered at Nairobi this 5th day of June, 2003

MBOGHOLI MSAGHA

JUDGE

R. M. MUTITU

JUDGE