

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL APPEAL NO.612 OF 1995

**(From Original Conviction and Sentence in Criminal Case No.8935 of
1994 of Senior Principal Magistrate's Court at Kibera**

DANIEL MULI..... APPELLANT

VERSUS

REPUBLIC..... RESPONDENT

JUDGMENT

The Appellant herein Mr. Daniel Muli was convicted in Criminal Case No.8935/94 (Chief Magistrate's Court Kibera Nairobi) for robbery with violence contrary to section 296 (2) of the Penal Code and sentenced to death; on the 23rd May 1995.

In his written grounds of appeal the appellant argued that his identification by way of recognition by P.W.1 was effective since P.W.1 did offer any proof that he ever employed him.

He also challenged the reliance on circumstantial evidence by the trial magistrate and argues that vital witnesses were left out. The appellant has submitted that his defence was not given due consideration and that the prosecution did not prove the case beyond any reasonable doubt.

We have noted that the state did not support the appeal. We have also had an opportunity to peruse the trial magistrate's record of the proceedings as well as the judgment.

Although the Appellant argued that there was no evidence adduced to prove that he was employed by the husband of the deceased, the evidence on record shows otherwise. P.W.1 testified that he personally employed the appellant as a house boy. He had personally interviewed him and engaged him two months prior to the incident. P.W.1 left the appellant on duty on the material day but did not find him in the house after robbery. The evidence of P.W.2 was corroborated by that of his son who testified as P.W.2. The fact that P.W.4 who was a nephew to P.W.1 did not know that the Appellant worked for P.W.1 does not mean that the Appellant did not actually work for the deceased as a house boy. P.W.6 could have failed to know the appellant because the appellant was only two months old in P.W.1's house.

We have noted that several items belonging to P.W.1 were recovered in possession of the appellant when he was arrested in his home area in Kitui by P.W.5. These included P.W.1's bed sheets, pocket watch, remote control for TV, a compact cassette containing Hindu songs, a table cloth. These items disappeared from the complainant during the robbery according to the evidence adduced. We have noted that the Appellant's denial of the offence in his unsworn defence statement was a bare denial of same. He did not address his mind to the evidence adduced by P.W.1 and P.W.2 that he used to work in the house where the deceased was killed and that he was on duty on the material day. He did not address himself to the evidence adduced in support of the offence to the effect that he disappeared immediately after the robbery or that he was found in possession of the property belonging to P.W.2. He did not give any explanation as to how he came to be in possession of such stolen property in his defence.

We are unable to allow the appellants appeal. We are of the strong conviction that the appellant was properly convicted on sound evidence. We dismiss the Appellants appeal against both conviction and sentence accordingly.

Delivered, dated and signed at Nairobi this 15th day of August 2003.

M. MSAGHAH

JUDGE

R.M. MUTITU

JUDGE