

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL APPEAL NO.320 OF 2002

(From original conviction and sentence of the SPM's court at Migori in criminal case No.661 of 2002)

**KELLION OMOLLO OMOLLO APPELLANT
VERSUS
REPUBLIC RESPONDENT**

JUDGMENT:

The only evidence which was used to convict the appellant was that of PW2 to the effect that she saw and identified the appellant at the very time of the robbery but a clear scrutiny of that evidence leaves us far from satisfied with its quality as to identification: She said she was struck with a panga before she became in a position to view the appellant. It means she was in pain and stressed when she purported to view the appellant. The circumstances of viewing were thus very difficult. It means that her evidence is not so readily credible on the issue of identification of the appellant. She could easily have been mistaken. The State Counsel does not support conviction. We find that he has acted properly. Accordingly we quash conviction and set aside the sentence. It means that the appellant shall be set at liberty forthwith unless otherwise he is held on another warrant.

Dated and delivered on the 13th of August 2003.

I.C.C. WAMBILYANGAH

JUDGE

P.K.K.A. BIRECH

COMMISSIONER OF ASSIZE