

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL APPEAL NO 268 OF 2001

**FROM ORIGINAL CONVICTION AND SENTENCE IN CRIMINAL
CASE NO 2509 OF 1999 OF THE SP MAGISTRATE'S COURT AT
KIBERA**

ANTONY IRUNGU WARUI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

The appellant Anthony Irungu Warui was convicted of the offence of robbery with violence C/s 296(2) of the penal code and sentenced to death. He filed an appeal challenging the said conviction.

At the hearing of this appeal, the learned counsel for the republic conceded the appeal and with respect we agree. The appellant was charged jointly with six others with four counts of Robbery with violence C/s 296(2) and two counts of possessing of a firearm and ammunition respectively. All the other co-accused were acquitted of all the offences while the appellant was convicted of the Robbery counts 1,2 and three. He was acquitted of the firearm offences.

The main reason why the appellant was convicted was his alleged presence at the scene where the money stolen was recovered. This was in line with the evidence of pw2. This was contested by the appellant.

Pw2 was seated at the back of the motor vehicle when the said motor vehicle was taken away at gun point. He heard gun shots and saw many people. This motor vehicle was then driven away and stopped when some people opened the rear door of the vehicle.

While it was his evidence that some people talked to him directly, he only identified the appellant and on-other. This was in a house in South C, Nairobi whose link with the robbery was not established. Pw2 did not offer any particular reason why and how he picked the appellant.

As correctly observed by the learned trial magistrate, the events took place very fast and considering that firearms were used terror and fear reign. The same doubt that was extended to the appellants co-accused should have been given to him. We are of the view that, the conviction was unsafe.

Accordingly, this appeal is allowed, conviction quashed and sentence set aside. We order that, unless otherwise lawfully held, the appellant shall be release forthwith.

Orders accordingly.

Dated and delivered at Nairobi this 29th day of July, 2002

MBOGHOLI MSAGHA

G. MBITO

JUDGE

JUDGE