

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

APPELLATE SIDE

CRIMINAL APPEAL OF 687 OF 1999

(From original Conviction(s) and Sentences) in Criminal Case No. 668 of 1999 of The Chief Magistrate's Court at Nairobi)

WILLINGTON OKWAKO AMERE.....APPELLANT
VERSUS
REPUBLIC.....RESPONDENT

J U D G M E N T

WILLINGTON OKWAKO AMERE.....APPELLANT
VERSUS
REPUBLIC.....RESPONDENT

J U D G M E N T

This appeal was originally consolidated with CR. A NO. 1197 of 1999. Silas Mwai Maina –v- Republic. However, when the appeals were called out for hearing on 18th October, 2001, the present appellant Wellington Okwako Amere was not produced. The appeals were separated whereupon the learned state counsel for the Republic conceded the appeal by Silas Mwai Maina. The present appeal was subsequently heard. We have evaluated the evidence. The scene had street lights which pw1 described as bright. Pw1 said he identified the two accused and that pw2 saw appellant carry the alternator.

There were about six people in all. No particulars of the six people were given to the police when the report was made. The appellant was said to have been arrested while climbing a wall. It is significant that this was said by Pw2 a single witness. The appellant said in his defence that he was in his house. It was his word against that of pw2. Out of the six suspects any of them could have dropped the alternator. Further, the prosecution was bound to prove a common intention. Where is the proof? The light at the place where the motor vehicle was parked may have been bright but there was no evidence of the distance between the scene of robbery and the place where the alternator was recovered.

A criminal charge that carries a mandatory death sentence is serious and clear, adequate and concise evidence is required to sustain a conviction. That standard was not achieved here and we find the conviction unsafe. Accordingly, this appeal is allowed conviction quashed and sentence set aside. The appellant shall be set free forthwith unless otherwise lawfully held.

Orders accordingly.

Dated and delivered at Nairobi this 11th day of July 2002

MBOGHOLI MSAGHA

JUDGE

G. MBITO

JUDGE