



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (MILIMANI LAW COURTS)**  
**CRIMINAL APPEAL NO. 1209 OF 1997**

(From Original Conviction and Sentence in Criminal Case No. 1389 of 1997  
of the Principal Magistrate's Court at Kibera.)

MATHEWS MWABISY ANGALUA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

**J U D G M E N T**

These appeals are consolidated. The two appellants were convicted of the offence of Robbery with violence C/s 296(2) of Penal Code and sentenced to death. Being aggrieved by the said conviction they appealed.

The facts as set out in the particulars of the charge and the evidence adduced are brief. On the night of 8th February, 1997, the complainant Ronald Ngaza was sleeping in a one roomed house at Kibera, Nairobi. There were two beds in his room one of which was occupied by his brother.

At about 11.00p.m this room was broken into and four people entered. They were armed with a panga and metal bar. They had torches. They ransacked the house and stole the things mentioned in the charge sheet. While in this process, the complainant and his brother were seated on their beds. The invaders' torches were on. In the course of removing the things stolen they flashed around the room and with the aid of light from the torches, the complainant and his brother recognized two of the invaders who are the appellants herein.

When the invaders were leaving the room, the complainant moved to block them to save his property. He was however cut on the head with a sharp panga, fell and lost consciousness. The thugs left but were confronted by a neighbour to the complainant who was attacked before they fled.

The complainant was taken to hospital where he remained unconscious for 10 days and left hospital after 28 days. In the meantime, the brother of the complainant led to the arrest of the 2nd accused Silvesta Munielo Mareka. When taken to the police, he led them to the arrest of his co-accused Mathew Mwabishi Angalua. They were then charged with the said offence. The complainant was then subsequently examined by a doctor who assessed his injuries as grievous harm.

In their respective defences, the two appellants denied the offence and implied they were framed for something they never did. The learned trial magistrate believed the evidence of the prosecution witnesses, disbelieved the defences and convicted the appellants.

We have re-evaluated the evidence on record. The offence was committed at night. There was no

other source of light except the torches used by the invaders. The appellants were known to the complainant and his brother. The complainant knew their names. It is that knowledge that led to the arrest of one of the appellants who then led the police to arrest his accomplice.

From the circumstances of the offence, the appellants must have taken a number of minutes in the single room to ransack and carry away the things stolen. This was in a single room. We find that conditions for possible positive identification existed. We believe the complainant and his brother. Indeed, the learned trial magistrate found both to be credible witnesses.

It is true that the appellants were not found with anything incriminating. That however is not an ingredient of the offence charged. A robbery was committed. The robbers were armed, actual violence was used. The complainant suffered a serious injury. It has been established the robbers included the appellants herein.

Accordingly, we find that the charge was proved against the appellants beyond reasonable doubt.

These appeals are therefore dismissed.

Right of appeal explained.

Dated and delivered at Nairobi this 3rd day of October, 2002

MBOGHOLI MSAGHA

JUDGE

G. MBITO

JUDGE