

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA**

**AT MACHAKOS
CRIMINAL APPEAL NO. 85 OF 2000**

**(From Original Conviction and Sentence in Criminal Case No. 207 of
2000 of the Senior Resident Magistrate's Court at Kajiado, Ndungu H. N.
(Miss) on 6.6.2000)**

MUSA THACHI WANJIRU ::::::::::::::::::::::::::::::::::::::: APPELLANT

VERSUS

REPUBLIC ::::::::::::::::::::::::::::::::::::::: RESPONDENT

**Coram: J. W. Mwera J.
Appellant not wishing to be present
Mrs. Murungi State Counsel for Respondent
C.C. Muli

J U D G E M E N T

The appellant faced a charge under S.296(1) Penal Code in that on 19.4.2000 at Loitokitok Kajiado, jointly with others not before court. They robbed Mary Wanjiku a radio cassette and cash all worth Sh. 3600/=. That before or after such robbery they threatened to use actual violence on Wanjiku.

The Learned Trial Magistrate at Kajiado heard the case. At the end of it she found the appellant guilty and ordered him to serve 36 months imprisonment, to receive 2 strokes of the cane and remain under police supervision for 5 years on his release from prison.

The petition of appeal claimed that the Learned Trial Magistrate relied on hearsay evidence and that the appellant's identification was not conclusive and positive. That the sentence was manifestly harsh.

The Learned State Counsel, went over the evidence in the lower court and said that the appellant was recognized even if the offence took place at night and that the sentence was deserved.

This court took time to go over the lower court record again i.e. the evidence and the Learned Trial magistrate's judgement. It is satisfied that conviction was on reliable and cogent evidence. The complainant (P.W.1) was woken up on the middle of night when her dwelling was raided. The raiders came with spotlights and this witness recognised the appellant even in her own torchlight, whom she knew for over a long time. They had lived in one plot for some 5 years and he had not covered his head.

Mary Nungari (P.W.2) aged 12 years but whom the Learned Trial Magistrate took the steps to examine as per the Oaths and Statutory Declarations Act (S.19 Cap. 15), and found her competent to testify on oath, was in the same house on the night of the said. The appellant stood some 2 meters from her and she recognized his face and as Musa.P.W.1 also had her torch alight. They demanded money. They were a group and P.W.1 had heard the appellant talking to the others outside before they got into the house.

This added on with the fact that after P.W.1 had recorded the robbery report Penal Code. Mwanzia (P.W.3) received the appellant about 5 days later brought by members of the public on account of the robbery makes it beyond doubt that the appellant was one of the robbers. The defence that he was arrested

for nothing from his shamba did not raise a reasonable doubt

. In the result that conviction was on cogent evidence and the sentence was deserved if not lenient.

This appeal is dismissed.

Judgement accordingly.

Delivered on 22nd January 2001.

20 J. W. MWERA

JUDGE