



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**APPELLATE SIDE**

**CRIMINAL APPEAL NO.96 OF 1999**

(From Original Conviction and Sentence in Criminal Case No.4369 of 1999 of the Senior Resident Magistrate's Court at Mombasa – L. Achode, Mrs. – S.R.M.)

**DAMWENA HASSAN MACHEA.....APPELLANT**

**=V E R S U S=**

**REPUBLIC.....RESPONDENT**

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

The Appellant was charged and convicted with the offence of Robbery with Violence and sentenced to death. His appeal to this court is against both conviction and sentence.

Briefly the prosecution case was that on the 18th day of December, 1998 at about 11 a.m. along Moi Avenue in Mombasa while PW.1 was walking in company of PW.2 and PW.3 who were a few meters ahead of him, he was attacked by the Appellant who was in company of two other robbers and was robbed of cash shs.61,000/-. He screamed and police officers who were on patrol responded and the Appellant was chased from the scene of the robbery and arrested a few meters away. PW.1 in evidence said that it was the Appellant who held him by the neck while armed with a knife. PW.2 and PW.3 screamed. PW.4 a Police Officer who was on patrol rushed to the scene and as the Appellant tried to escape he chased him with the assistance of the members of the public and they managed to arrest the Appellant. The other two assailants who were with the Appellant managed to escape.

The evidence of the complainant is corroborated by that of PW.2 and PW.3 as well as PW.4. PW.2 and PW.3 were walking ahead of the complainant when the complainant was attacked and raised an alarm. They turned and saw the Appellant and two others attacking the complainant and the attack was too fast. PW.4 a Police Officer who heard the scream a few meters away in his evidence stated that he saw the Appellant holding the complainant by the neck. He chased the Appellant while members of the public who had also witnessed the robbery pelted stones at the Appellant and he managed to arrest him. He said he never lost sight of the Appellant from the scene of the robbery to the time he was arrested.

The Appellant's defence that on the material date Police arrested him at his kiosk after he had refused to give them a bribery of shs.2000/- which they had asked for was rejected by the Trial Magistrate and rightly so. The Appellant was positively identified by PW.1, PW.2, PW.3 and PW.4 and the offence was committed during broad day-light and PW.4 never lost sight of the Appellant from the scene of the robbery to the time he arrested the Appellant.

The conclusion we have come to is that the identification evidence upon which the Appellant's conviction was based was free from the possibility of error. The end result is that the conviction of the Appellant was safe and this appeal must fail and we dismiss the Appellant's appeal.

Order accordingly.

**Dated and delivered at Mombasa this 27th day of September, 2001.**

**J.L.A. OSIEMO**

**J U D G E**

**J.N. KHAMINWA**

**COMMISSIONER OF ASSIZE**