



REPUBLIC OF ENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA

APPELLATE SIDE

CRIMINAL APPEAL NO.255 OF 1999

JACOB MUKUNGA.....1ST APPELLANT

=V E R S U S=

REPUBLIC.....RESPONDENT

CONSOLIDATED WITH

CRIMINAL APPEAL NO.257 OF 1999

SHEM ABIENDA OMONDI.....2ND APPELLANT

=V E R S U S=

REPUBLIC.....RESPONDENT

CONSOLIDATED WITH

CRIMINAL APPEAL NO.258 OF 1999

STEPHEN MURURI.....3RD APPELLANT

=V E R S U S=

REPUBLIC.....RESPONDENT

**(From Original Conviction and Sentence in Criminal Case No.3896 of 1998
of the Chief Magistrate's Court at Mombasa – Jo-Anne Siganga, Ms. –
SRM)**

J U D G M E N T

The Appeals No.255 of 1999, No.257 of 1999 and No.258 of 1999 were consolidated.

The 1st Appellant Jacob Mukunga (Original A.2) 2nd Appellant Shem Omondi (Original A3) and 3rd Appellant Stephen Mururi (Original A1) were convicted by the Senior Resident Magistrate Mombasa of robbery with violence contrary to Section 296(2) of the Penal Code and were sentenced to death. Their

Appeals to this court are against conviction and sentence.

Briefly the prosecution case was that on the 4th October, 1998 at about 5.20 a.m. PW.1 who had traveled from Nairobi over night had alighted at Malindi Bus Stage at Bondeni. At about 6 a.m. he was walking along Moi Avenue towards Standard Bank, Maritime Branch. He was confronted by a gang of 6 men who were armed with knives. They stabbed him with a knife on the forehead and robbed him of his bag which contained the items mentioned in the charge sheet. They left him bleeding and as they escaped he screamed. Members of the public who had witnessed the robbery responded and managed to arrest 3 of the robbers who are the 3 Appellants before court. While those members of the public were in the process to lynch the Appellants they were rescued by PW.2 and PW.3 Administrative Police Officers who came by. In their evidence PW.2 and PW.3 said they joined members of the public to chase Appellants from the scene of the robbery to the place where they were arrested. The bag which had been robbed from the complainant was recovered with all the items intact and were identified by the complainant as PW.2 and PW.3 escorted the Appellants to Central Police Station where they handed them over to PW.4 who re-arrested them and they were charged with this offence. The Appellants were arrested immediately after the robbery.

In their defence the Appellants denied the offence and maintained that they knew nothing about it. We have for our part re-examined the evidence relating to the identification of the Appellants as the persons who attacked and robbed the complainant and we are satisfied that the Appellants were positively identified and it was free from the possibility of error or mistake. Their denials in their defence were rightly rejected.

We have no hesitation in dismissing the appeals.

Accordingly the Appellants' appeals are dismissed.

Dated and delivered at Mombasa this 8th day of October, 2001.

J.L.A. OSIEMO

J U D G E

G.A. OMWITSA

COMMISSIONER OF ASSIZE