



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT MOMBASA
APPELLATE SIDE

CRIMINAL APPEAL NO.97 OF 1999

(From Original Conviction and Sentence in Criminal Case No.1174 of 1999 of the Principal Magistrate's Court at Malindi – J.M. Matu, Mrs. – Ag. P.M.)

KURA CHARO NDOMBO.....APPELLANT

=V E R S U S=

REPUBLIC.....RESPONDENT

J U D G M E N T

The Appellant was convicted of robbery with violence contrary to Section 296(2) of the Penal Code. He was sentenced to death. His appeal to this court is against both conviction and sentence.

The prosecution case was thqt on the 12th June, 1998 at around 10.30 p.m., PW.1 was riding his bicycle from duty. When he reached Alaskani Ground he found 3 people who attacked him and robbed him of his bicycle. They were armed. One of the assailants punched him while another cut him with a knife. Two of them fought with him for some time and the Appellant was one of them. He managed to identify the Appellant through moonlight. They escaped towards the slaughter-house.

On 27th June, 1998 PW.3 who is a neighbour to the Appellant found the Appellant with a bicycle knowing that the Appellant has never owned a bicycle. He reported him to the Chief who looked for the Appellant and arrested him and took him together with the bicycle to the Police. On 4th July, 1998 PW.1 was called to the Police Station where he was shown the bicycle which he identified as his. Later that day he attended an Identification Parade where he picked the Appellant as one of those people who had robbed him of the said bicycle. The Identification Parade was conducted by PW.4 IP Cosmas.

The Appellant in his defence elected to say nothing.

The main ground of appeal by the Appellant is identification. A bicycle, the property of PW.1 was recovered from the Appellant two weeks after PW.1 had been attacked and robbed of the same. The appellant was therefore in recent possession of property which had been robbed two weeks earlier. The Trial Magistrate held that the appellant must have taken part in the robbery with violence. We agree with her finding. Moreover, in addition to the visual identification by PW.1, hence the evidence of a single witness, there was other evidence. The robbed bicycle was recovered from the Appellant only two weeks after the robbery had taken place, which evidence was not rebutted or challenged by the Appellant. In his defence he simply said:- "I will not say anything".

In our judgment, there was overwhelming evidence in support of the conviction over which the Appellant

complains. The sentence is lawful.

The up shot is that the appeal of the Appellant fails and it is ordered that it be dismissed.

Dated and delivered at Mombasa this 5th day of October, 2001.

J.L.A. OSIEMO

J U D G E

C.A. OMWITSA

COMMISSIONER OF ASSIZE