

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYAMIRA

CORAM: D.S MAJANJA J.

CRIMINAL APPEAL NO. 70 OF 2017

YUVENALIS MARIETA OCHOKI APPELLANT

VERSUS

REPUBLIC RESPONDENT

(Appeal from the original conviction and sentence of Hon. J. Mwaniki – PM dated 31st July 2015 at the Principal Magistrate’s Court at Keroka in Criminal Case No. 1027 of 2015)

JUDGMENT

1. The appellant, YUVENALIS MARIETA OCHOKI, was charged, convicted and sentenced to 15 years imprisonment on four counts of robbery with violence contrary to section 296(2) of the Penal Code (Chapter 63 of the Laws of Kenya). It was alleged in the particulars that on 16th July 2015 with his co-accused THOMAS MOKUA MEMBA and others not before the court, at Bonyunyu Sub-location, Masaba North District within Nyamira County they raided the homes and shops of the complainants, PIUS AMONGA JAMES, DENNIS NYAMORA NYASANE, DOUGLAS MOGENI and DENNIS MAGANGI ABOGI while armed with crude weapon and robbed them of personal items, money and shop merchandise and immediately after the robberies inflicted violence on them.

2. The key issue in this appeal is whether the appellant was identified as one of the assailants. In the appeal concerning the appellant’s co-accused, THOMAS MOKUA MEMBA, Maina J., in Nyamira HCCRA No. 31 of 2017, reviewed the evidence and concluded as follows;

I lump the robberies and the evidence of the four complainants together because these were offences committed in the same transaction. If PW 1 and PW 2 mistakenly referred to the appellant as (YUVENALIS), the 1st accused yet he was the 2nd accused, the doubt thereby ought to have been given to the appellant and he should have been acquitted.

3. It is on the aforesaid basis, that I allow this appeal, set aside the conviction and sentence. The appellant is set free unless otherwise lawfully held on a separate warrant.

Dated and delivered at Kisii this 5th day of April 2019.

D.S MAJANJA

JUDGE

Mr. Otieno, Senior Prosecution Counsel, instructed by Office of Director of Prosecutions.

Appellant in person.