



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CRIMINAL APPEAL NO. 709 OF 2007**

CHRISTOPHER NJOROGE MUMBI ..... APPLICANT

VERSUS

REPUBLIC ..... RESPONDENT

*(From original conviction and sentencing in Criminal Case No. 4521 of 2006 at the Chief Magistrate's Court in Thika by F. Nyakundi - Senior Resident Magistrate on 2<sup>nd</sup> November 2007)*

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

The appellant was charged with the offence of robbery with violence contrary to Section 296 (2) of the Penal Code. In the alternative, he was charged with the offence of handling stolen goods contrary to Section 322 (2) of the Penal Code.

He denied the offences but after a full trial he was convicted of the main charge and sentenced to death. This appeal arises from the said conviction and sentence.

In his petition and submissions made in addressing his appeal, the appellant has raised several issues. He has challenged his conviction on the basis that he was not properly identified as the person who committed the offence mainly on the basis that the mode of lighting at the time did not aid the complainant to positively identify him. It is also his case that the prosecution case was riddled with contradictions and therefore could not sustain the conviction. Finally, it is his case that his defence was never considered by the learned trial magistrate and that Section 169 of the Criminal Procedure Code was not complied with.

As the first appellate court we are mandated to evaluate the entire evidence adduced before the trial court, assess the same and come to independent conclusions.

It was the complainant's evidence that the appellant went to his shop to buy some cigarettes. Earlier in the day he had passed by and it was the same person who returned and attacked him. He had seen him previously because he used to do some casual work near his shop. At the time of the robbery there was electricity lighting which enabled him to see and recognize the appellant. The complainant was robbed of the goods set out in the charge sheet. He raised an alarm and PW3 appeared.

PW3 had earlier met the appellant carrying a yellow bucket full of some items some of which were falling off. On reaching the complainant's shop, she informed him of her meeting with the appellant and this prompted the complainant to go to the appellant's home on the following day. On reaching the home of the appellant which was pointed out by his (appellant's) sister, some goods stolen from the shop were recovered. The appellant was subsequently arrested and charged with this offence.

It was the complainant's case that the appellant was in a group of four people who raided his shop. During the robbery these people were armed with a firearm and pangas. In the process the complainant was stabbed on his left hand and arm with something like knives. The rest of the people were not arrested and only the appellant faced this trial.

The complainant was subsequently examined by one Dr. Erick Osoro who produced the P3 form in evidence confirming the injuries he had suffered. In his defence, the appellant denied the offence and stated that he was on his way home when he found a bucket on the road with some items inside and others on the grounds.

PW3 met him picking those items which he collected and took to his house. On the following day he was informed that he was being sought and decided to go to the complainant's shop where when asked about those items, he admitted he had them and the circumstances of his possession of the same. Despite his denial he was taken to the police station.

The learned trial magistrate believed the prosecution case, disbelieved the defence of the appellant and proceeded to convict him. The evidence that the complainant knew the appellant before was not seriously disputed by the appellant. In fact the complainant remained firm under cross examination by the appellant about his identity.

PW3 also confirmed soon after the robbery that it was the appellant she met carrying a bucket full of some goods some of which were falling out. Some of those goods were recovered from the appellant's house on the following day.

Our assessment of the evidence of the appellant's identification by the complainant at the shop is that it cannot be mistaken. He used to work near his shop. He had been to the shop earlier on that day and electricity lighting was available at the time of the robbery. Infact this was the case of recognition of the appellant by the complainant.

Going by the evidence of PW3, which corroborated that of the complainant as relating to the goods stolen, read alongside the recovery of the goods in the house of the appellant, placed the appellant at the scene of the robbery.

There is no doubt whatsoever that the appellant was among the four people who raided the shop of the complainant and stole the goods set out in the charge sheet. The complainant was injured in the process of this robbery a fact confirmed by the doctor, PW4.

The defence of the appellant advanced in answer to the charge cannot withstand the weight of the prosecution case. The said defence was considered by the learned trial magistrate and declared not truthful.

The appellant and others were armed with dangerous weapons, they used violence on the complainant who was injured in the process, the appellant was in company of others not before the court and therefore cannot escape the conclusions arrived at by the learned trial magistrate. At the end we find that the ingredients of Section 296 (2) of the Penal Code were met to justify the conviction.

The conviction was therefore safe and since the sentence is mandatory we have no reason to interfere with the same. Accordingly this appeal is hereby dismissed.

**SIGNED, DATED and DELIVERED in open Court this 4<sup>th</sup> day of November, 2013.**

**A. MBOGHOLI MSAGHA**

**L. A. ACHODE**

**JUDGE**

**JUDGE**