



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**  
**Criminal Appeal 235 of 2008**

**BENSON CHEGE MBUGUA.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGMENT OF THE COURT**

BENSON CHEGE MBUGUA, the Appellant, was, with another, charged with robbery with violence contrary to Section 296(2) of the Penal Code. The particulars of the charge against them were that on the 5<sup>th</sup> day of May 2007 at Nyahururu township in Laikipia District within Rift Valley Province, jointly with others not before court, while being armed with offensive weapons namely knives and rungas they robbed Samuel Muruga Kiranga of cash KShs. 1450/=, voters card and a national identity card all valued at KShs. 1450/= and at or immediately before or immediately after such robbery used actual violence on the said Samuel Muruga Kiranga. They denied the charge but after trial the other accused was acquitted but the Appellant was convicted and sentenced to death. He has appealed to this court against that conviction and sentence.

The prosecution case was that as the complainant, PW1 and his friend, PW2, walked home from a bar in Nyahururu township, they met four people. One had a torch which he shown on them and ordered them to lie down. PW1 defied that order and he was tripped, stabbed and robbed of the above mentioned items. PW2 managed to escape. As PW1 and some security guards walked to hospital, they met the Appellant who PW1 identified the red jacket he wore. They arrested him and later handed him over to the police.

The main point taken by the Appellant is identification. We agree with him that the conditions at the scene were not favourable for a positive identification. The offence was allegedly committed at about 11.00 pm. The complainant, PW1, and his friend, PW2, claimed that they were able to identify the red jacket the Appellant was wearing and see his face with the aid of security lights that lit the scene. Besides the fact that we are not told how far the security lights were its intensity was also not stated. We do not think it was bright enough to have enabled those witnesses to identify the Appellant. If it was then one of the robbers would not have needed to flash his torch.

As PW1 and PW2 did not give the description of any of the robbers before they arrested the Appellant, we are, after a careful study of the record of appeal, satisfied that the Appellant was arrested because the complainant and his group met him soon after the robbery.

For these reasons we find that there was no credible evidence to support the Appellant's conviction. Consequently we allow this appeal, quash the conviction and set aside the sentence. The Appellant shall be set free unless otherwise lawfully held.

**DATED and delivered this 6<sup>th</sup> day of October, 2009.**

**D. K. MARAGA**

**JUDGE.**

**M. G. MUGO**

**JUDGE**