



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROB
MILIMANI LAW COURTS
CRIMINAL APPEAL NO.1110 OF 1998
(From Original conviction and Sentence in Criminal Case No.4970 of 1997
of the Principal Magistrate's court at Kibera)

JOHN KURIA GATEMBU APPELLANT

VERSUS

REPUBLIC RESPONDENT

P R O C E E D I N G

27/5/1999

Coram: Osiemo, J.,

Etyang, J.,

AppellanUnrepresented

Mr. O'Mirema for the State Counsel

C/Clerk Onduma

Hellen

Appellant – Appeal against both conviction and sentence. I rely on the grounds as contained in my memo of appeal. I also have written submission to add.

J.L.A. OSIEMO

JUDGE

A.G.A. ETYANG

JUDGE

Mr. O'Mirera: I support both conviction and sentence. The appellant was convicted with 3 counts. Robbery contrary to Section 256(2), Penal Code of motor vehicle contrary to section 278 Penal Code Sentenced to dead in count 1 and imprisonment for 2 and 3. Evidence of P.W.2 was attacked at 9 a.m. and robbed **Shs.30,000/=** property of P.W.1's motor vehicle were missing at the same time. The appellant raised an Alibi P.W.2 was in P.W.1's home at material time when the appellant came in driving

and asked P.W.2 to take him to Aunt's home. Appellant came back after a few minutes with two other people. The Appellant was supposed to escort her to her aunt's place. P.W.2 went to collect the purse and when she came back she was attacked by the appellant and robbed.

The appellant after the robbery went away with the motor vehicle of P.W.1. P.W.2 reported to P.W.1 immediately when P.W.1 arrived he found P.W.2 had been robbed and assaulted. Reported the matter to police. P.W.2 identified the appellant as the driver of P.W.1. Report made to the police and name of appellant given. Evidence of recognition and it was broad day light 9 a.m. no possibility of mistaken identity. P.W.6 recovered the stolen motor vehicle the same day at 9 p.m. at Kileleshwa.

On the material date the appellant was on duty as he had taken P.W.1's children to school.

The evidence against the appellant was overwhelming. The evidence of the appellant of alibi Was dismissed.

The conviction is safe and the appeal should be dismissed. I concede to the appeal in respect of count 3. Evidence against appellant not proved.

J.L.A. OSIEMO

JUDGE

A.G.A. ETYANG

JUDGE

Appellant: I was an employee of P.W.1 and I had worked for him for 11/2 months P.W.2 said she was robbed shs.30,000/=. I could not have robbed P.W.2 since she knew me well. P.W.2 could not have walked to up stairs if she had been strangled. Her evidence should be disregarded.

J.L.A. OSIEMO

JUDGE

A.G.A. ETYANG

JUDGE

Judgment on 15th June, 1999

J.L.A. OSIEMO

JUDGE

A.G.A. ETYANG

JUDGE