



REPUBLIC OF KENYA
CRIMINAL APPEAL NO. 468 of 1997

(From Original Conviction and Sentence in Criminal Case No. 20623 of 1995
of the Principal Magistrate's Court at Makadara: M.M. Muya Esq.)

JOHN NJOROGE NJEHIA.....APPELLANT
- Versus-
REPUBLIC.....RESPONDENT

(CONSOLIDATED WITH)
CRIMINAL APPEAL NO. 568 OF 1998

(From Original Conviction and Sentence in Criminal Case No. 20623 of 1995
of the Principal Magistrate's Court at Makadara: M.M. Muya Esq.)

PETER CHEGE KAHENYA.....APPELLANT
-Versus-
REPUBLIC.....RESPONDENT

(CONSOLIDATED WITH)
CRIMINAL APPEAL NO. 1220 OF 1996

(From Original Conviction and Sentence in Criminal Case No. 20623 of 1995
of the Principal Magistrate's Court at Makadara: M.M. Muya Esq.)

PETER IRUNGU WACHIRA.....APPELLANT
-Versus-
REPUBLIC.....RESPONDENT

Coram: Osiemo J.

Appellant 1 - CRA No. 1220/96 - In person - present

Appellant 2 - CRA No. 468/97 Mr. Kanyi

Appellant 3 - CRA No. 568 -

Respondent - Mrs. Oduor for the State

Mr. Onduma - Court Clerk

JUDGEMENT

The appeals No. 1120 of 1996, 568 of 1998 and No. 468 of 1997 were consolidated.

The appellants were charged with robbery with violence contrary to Section 296 (2) of the Penal Code.

They were convicted with a lesser charge under Section 296 (1) of the Penal Code and were sentenced to 7 years imprisonment with 8 strokes corporal punishment.

They appeal to this court against both the convictions and sentences. The issue on appeal is identification under circumstances which were not conducive for positive identification.

The complainants PW1 and PW2 were travelling in a motor vehicle registration number KPM 958 along Kariobangi Terminus. This was about 7 p.m. in the evening. On reaching Outering junction they stopped to give way to another motor vehicle. Three people emerged. One was armed with a pistol, and another with a knife. They entered their vehicle and the 3rd man asked for the keys of the vehicle and started driving away.

They ordered PW1 and PW2 to sit at the rear. Those robbers dropped PW1 and PW2 near the Chief's camp. They robbed them of the motor vehicle and other valuables including cash Sh.4,000/- PW1 and PW2 walked to the nearby chief's camp and reported to the Administration Police about the robbery. PW3 who received the report at the camp accompanied them to search of the robbers.

Later PW3 received a report that there was a man at the bus stage who was harassing members of the public. he proceeded there with PW1 and PW2. When the appellant 1 saw them he started running away but was chased and arrested. He said he was with 2 others and led them to a changaa den where the appellant 2 and another were arrested. The appellants denied any involvement in the alleged robbery and the appeal dwelt on identification arguing that the alleged robbery took place at 7 p.m. under circumstances which were not favourable for positive identification.

The complainants did not state in their evidence how they managed to identify the robbers.

The learned state counsel concedes to the appeals submitting that the circumstances were not favourable for positive identification and the complainants did not state how they managed to identify the appellants as at the time the alleged robbery took place it was dark.

The convictions cannot safely be supported and therefore the appeals are allowed.

The convictions of the appellants are quashed, sentences set aside and the appellants are ordered to be set at liberty forthwith, unless held for any other lawful cause.

Dated and delivered at Nairobi this 21st day of May, 1998.

J.L.A. OSIEMO

JUDGE