

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (MILIMANI LAW COURTS)

CRIMINAL APPEAL NO. 238 OF 1997

**(From Original Conviction/Sentence and in Criminal Case No. 130
of 1996 of the Senior Resident Magistrate's Court at Kangema: H.N.
Ndungu (Miss))**

NAFTALI BIRURI MWANGI.....APPELLANT

Versus

REPUBLIC.....RESPONDENT

Coram: Osiemo J.

Appellant - In person - present

Respondent - Mrs. Oduor State Counsel

Mr. Onduma - Court Clerk

JUDGEMENT

The appellant was convicted with two offences under section 296 (1) and one offence under section 123 of the penal code. He was sentenced to 5 years imprisonment for count 1 and 2 and with 5 strokes of the cane and ordered to be under police supervision for 5 years after sentence and 12 months imprisonment for count 3. His appeal to this court is against both conviction and sentence.

Briefly the fact to the prosecution case was that on the 29-2-96 at about 10 p.m. PW1 and PW2 who were the complainants in count 1 and count 2 respectively were coming from Western bar on their way home. they met 3 people on the way. Those 3 people robbed PW1 of cash Sh.600/- and an ID card and PW2 of cash Sh.500/-. There was bright moonlight and they managed to identify the appellant by recognition. He was known to them before. They went and reported the matter to the police and gave his name to PW5 who recorded their statements. The appellant was arrested on the 2-3-1996 by but escaped while being escorted to the police station. The appellant escaped while he was in the custody of PW4 and PW5. this is the subject matter of count 3. His name was given to the area chief and he was later arrested by PW3. AP Maina who escorted him to the police station where he was arraigned with these offences. The appellants defence was a mere denial. The learned trial magistrate relied on the evidence of PW1, PW2, PW4 and PW5 to convict the appellant. He was positively identified by recognition by PW 1 and PW2 who had known before and when they reported the robbery they gave his name to the police. There is evidence by PW5 who confirmed that when the complainants reported the robbery, they had given the name of the appellant as one of the assailants. After re evaluation to the evidence on record of the lower court I am satisfied that the evidence against the appellant was overwhelming and I see no reason to interfere with the finding of the learned trial magistrate. The appeal against conviction is therefore dismissed.

I now turn to the sentence. The appellant was sentenced to 5 years imprisonment with 1 stroke of the cane each for count 1 and 2 and 12 months imprisonment for count 3. Sentence to run concurrently.

Although the appellant was a first offender, the sentence meted against the appellant cannot be said to be excessive taking into account that the complainants had sustained injuries during the robbery. The appeal against sentence is also dismissed. The appeals against both conviction and sentence is dismissed.

Dated and delivered at Nairobi this 9th day of June, 1998

J.L.A. OSIEMO

JUDGE