

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

APPELATE SIDE

CRIMINAL APPEAL NUMBER 444 OF 1997

(From original conviction and sentence in criminal case number 22816 of 1996 of the Principal magistrate's court at Makadara)

FRANCISCO KAMOU.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

Francisco Kamou was charged and convicted and sentenced to 3 years imprisonment plus 3 strokes of the cane on each count.

The appellant pleaded Not Guilty in the lower court but he was found Guilty and convicted on both counts, and subsequently sentenced to 3years imprisonment plus 3 strokes of the Cain on each count. Custodial sentences were to run concurrently. The Magistrate ordered that the appellant be repatriated to his home district upon release prison.

The appellant filed the present appeal, complaining that the evidence of the 2 complaints contradicted each other as to how many people robbed them. He complained further that the complaints stated that on 26.12.96, between 7.00-8.00 p.m they closed their business went to a bar briefly and were now going home. Five people attacked them overpowered them and ransacked their pockets and took both cash money and personal effects. Both complainants saw the appellant with the aid of streetlights. PW1 used to see him walking near his place of work along pumwani road, and PW2 also knew the appellant.

The two complaints reported the matter to the police. They did not catch the appellant that evening as the appellants and his colleagues ordered them to leave after robbing them, but PW3 saw the appellant the following day, and he was arrested by PW2 and PW4 and charged with the offence. The appellant denied the offence saying that he was arrested whilst on his way to a friend's house.

The Learned Magistrate found that the 3 complaints recognized the appellant. He was satisfied that the appellant committed the offence and charged and convicted him. It is true that no exhibits were recorded, but that did not mean that there was no evidence to prove the charge. The Trail Magistrate found that there was, and I find that that finding was correct, in the circumstances. Further, I have not found any contradiction in evidence of the complaints. The record shows quite clearly that PW1 and 3 recognized the appellant's face, not his clothes. There is no merit therefore in the ground of appeal which states that recognition of the appellant was by his clothes.

All in all, I find no merit in the appeal filed by the appellant. I proceed to dismiss the same on both conviction and sentenced in respect of both counts.

Dated at Nairobi this 15th day of October 1998.

JOYCE ALUOCH

