

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL APPEAL NO. 321 OF 1995

(From Original Convictions) and Sentence (s) in Criminal case No. 2870
of 1994 of the Principal Magistrate's Court at Makadara Give station and
Trial Magistrate's Name). M.M. Muya (Esq).

JAMES ONYANGO MUNDANYA.....APPELLANT
VERSUS
REPUBLIC.....RESPONDENT

J U D G M E N T

The learned counsel for the Republic concedes this appeal and with respect I agree. The prosecution case rested on the identification of the appellant. The ordeal is said to have taken about 20 minutes and the complainant identified the appellant with the aid of a torch light and some other light from the children's room.

The identification parade was conducted after one year from the date of commission of the alleged offence. The learned trial magistrate did not address the issue neither did she warn herself of the danger of convicting on such evidence.

The conviction was therefore unsafe and cannot be sustained.

Accordingly, this appeal is hereby allowed conviction quashed and sentence set aside. I am unable to order the release of the appellant as he is still serving sentence in other cases.

Orders accordingly.

Dated and delivered at Nairobi this 11th day of December, 1998

A. MBOGHOLI MSAGHA
JUDGE