

REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT NAIROBI

CORAM: OMOLO & SHAH, J.J.A. & BOSIRE, AG. J.A.

CRIMINAL APPEAL NO. 91 OF 1995

BETWEEN

PETER NDUNGU NJOROGE APPELLANT

AND

REPUBLIC RESPONDENT

(Appeal from an order of the High Court of Kenya at Nairobi
(Patel J) dated 26th April, 1995

in

H.C.C.R.A. NO. 1429 OF 1994)

JUDGMENT OF THE COURT

Mr. Bwonwonga, the Assistant Deputy Public Prosecutor, who appears for the state concedes this appeal. In our view he is right to do so. The appellant filed first appeal in the High Court. When the appeal went before Patel, J. he purported to make an order on revision. In the "Order on Revision" the Judge purported to summarily reject the appeal. An appeal can only be summarily rejected under section 352(2) of the Criminal Procedure Code. That provision only applies when a judge of the High Court is satisfied, upon perusal of the record of the subordinate court, that neither the conviction nor the sentence imposed raises reasonable issue which can be argued on appeal. The grounds of appeal by the appellant raised the question of identification; that is always a question of law and takes away the power of the High Court to summarily reject an appeal.

Secondly the learned Judge of the High Court purported to reduce the sentence imposed when he (judge) purported to summarily reject the appeal. The very fact that the Judge thought the sentence ought to be reduced constituted a reason for admitting the appeal to hearing. We would respectfully point out to the learned Judge that there is no provision in the Criminal Procedure Code authorising the High Court to combine the provisions of section 352(2) with the revision provisions under section 362 of the Code. We are equally surprised that the Judge thought the sentence of five years imprisonment was harsh and excessive when the facts alleged and accepted by the magistrate and the Judge himself showed the appellant and his cronies were armed with guns when the alleged robbery occurred. We allow this appeal and set aside all the orders made by the Judge. We order that the appellant's appeal be admitted to hearing and thereafter be heard and determined according to law by the High Court.

Those shall be our orders.

Dated and delivered at Nairobi this 15th day of January, 1997.

R. S. C. OMOLO

JUDGE OF APPEAL

A. B. SHAH

JUDGE OF APPEAL

S. E. O. BOSIRE

AG. JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR