



IN THE COURT OF APPEAL

AT NAKURU

(CORAM: GICHERU, TUNOI & LAKHA, JJ.A.)

CRIMINAL APPEAL NO. 111 OF 1995

BETWEEN

LOYALE LEMPINKANI.....APPELLANT

AND

REPUBLIC..... RESPONDENT

(Appeal from a judgment of the High Court of Kenya at Nakuru (Mr. Justice D.M. Rimita Dated 12th May, 1995,

IN

H.C.CR.A. NO.300 OF 1991)

JUDGMENT OF THE COURT

The appellant, Loyale Lempinkani, was after trial jointly convicted with one Ltaraon Lemurtunya, on two counts of robbery contrary to section 296(1) of the Penal Code and sentenced to 7 years' imprisonment and ten strokes of the cane on each count. The sentences of imprisonment were ordered served concurrently but the strokes were ordered to be administered consecutively. The trial court also imposed the mandatory police supervisory period of 5 years. His appeal to the High Court against conviction and sentence was dismissed save that the number of strokes was reduced to 3 on each count.

The appellant now appeals to this court and has urged a number of grounds, the main one being that he was not properly identified as the person who committed the offences preferred against him and subsequently convicted.

The facts in so far as they relate to the counts which have given rise to this appeal are that on the night of 15th January, 1991, a gang of robbers broke into the shop of Musa Ahmed at Lodwa Shopping Centre, Maralal, and using violence stole cash and shop items. In the process the gang injured Ahmed and rendered him unconscious. He only came to a week afterwards. Two other shops within the trading centre were also robbed. As the gang took away the shop goods the appellant was identified by P.W.3.

Both the trial magistrate and the learned judge have made concurrent findings of fact and having reviewed the evidence ourselves, we are more than satisfied that the identification of the appellant was positive. It was also proved that the knife belonging to the complainant was very soon after the robbery found in possession of the appellant. The possession, in the circumstances, pointed irresistibly to his

having committed the offence in the absence of an explanation by the appellant to account for his possession of that knife.

There was overwhelming evidence against the appellant, and in our view, he was properly convicted. It follows that this appeal has no merit at all and it is dismissed.

Dated and delivered at Nakuru this 27th day of September, 1996.

J.E. GICHERU

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JUDGE OF APPEAL

P.K. TUNOI

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JUDGE OF APPEAL

A.A. LAKHA

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JUDGE OF APPEAL