



**REPUBLIC OF KENYA
IN THE COURT OF APPEAL OF KENYA
AT NAKURU**

CRIMINAL APPEAL 43 OF 1994

FRANCIS KURIA MUIYURO.....APPELLANT

AND

REPUBLIC.....RESPONDENT

**(Appeal from a conviction and sentence of the High Court of Kenya at Nakuru
(Lady Justice Nambuye) dated 2nd July, 1993**

IN

H.C.CR.C. NO. 422 OF 1992)

JUDGMENT OF THE COURT

The appellant Francis Kuria Muiyuro was convicted by the Nakuru Resident Magistrate of robbery contrary to section 296(1) of the Penal Code and sentenced to 7 years imprisonment plus 12 stokes of the cane together with the mandatory 5 years police supervision period. His appeal to the High Court on conviction was dismissed but the sentence was reduced to 5 years imprisonment and 4 strokes of the cane. Against that dismissal the appellant has appealed to this Court.

This being a second appeal, this Court is precluded from questioning the findings of fact of the trial court provided that there was evidence to support those findings, though it may think it possible, or even probable, that it would not have itself come to the same conclusion. It can only entertain a second appeal on a point of law. See R v Hassan Bin Said [1942] E.A.C.A.62.

The concurrent findings of fact of the trial and the first appellate court that the appellant was a member of the gang that broke into the complainant's house during the material night and assaulted him and his family, is sustainable on the evidence. There was, in our view, positive identification of the appellant.

In this second appeal, the appellant has not raised any points of law in his original and supplementary memorandum of appeal to persuade us to interfere with the conviction. Accordingly, his appeal fails. We dismiss it.

Dated and delivered at Nakuru this 20th day of February, 1995.

A.M. AKIWUMI

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JUDGE OF APPEAL

P.K. TUNOI

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JUDGE OF APPEAL

A.B. SHAH

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR