

REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT NYERI

(Coram: Omolo, Akiwumi & Lakha, JJ.A.)

CRIMINAL APPEAL NO. 84 OF 1994

BETWEEN

FRANCIS NDUATI WAITHAKA.....APPELLANT

AND

REPUBLIC.....RESPONDENT

(Appeal from a conviction and sentence of the High Court of Kenya at Nyeri (Lady Ang'awa) dated 24th June, 1994 in

H.C. CR. APPEAL NO. 139 OF 1992)

JUDGMENT OF THE COURT

The appellant was tried and convicted on various counts of robbery with violence contrary to section 296(1) of the Penal Code and upon his conviction, he was sentenced to a total of seven years imprisonment, twenty strokes of the cane and the mandatory five years of police supervision upon his release from prison. He then appealed to the High Court against both the convictions and sentences and among his grounds of appeal were some challenging his identification by the prosecution witnesses who alleged they saw him among the robbers during the nights of the robberies. The learned Judge thought it fit to summarily reject the first appeal under section 352(2) Criminal Procedure Code. The issue of identification raised by the appellant took away his appeal from the provisions of section 352(2) and the learned Judge had no jurisdiction to summarily dismiss the appeal under that section. Counsel for the Republic concedes that the summary rejection was erroneous. We allow the appeal, set aside the summary rejection and direct that the learned Judge must admit the appellant's appeal and proceed to hear it according to law. Those shall be our orders.

Dated and delivered at Nyeri this 8th day of May, 1995.

R.S.C. OMOLO

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JUDGE OF APPEAL

A.M. AKIWUMI

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JUDGE OF APPEAL

A.A. LAKHA

.....

JUDGE OF APPEAL

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

DEPUTY REGISTRAR