

REPUBLIC OF KENYA

IN THE HIGH COURT,

AT MOMBASA

Criminal Appeal No. 473 of 1991

Amungo.....PLAINTIFF

VERSUS

Republic.....DEFENDANT

November 9, 1992, **Wambilyanga J** delivered the following Judgment.

The 2 appellants Francis Osaro Amungo and Abdul Omar Wafula (herein referred to as the 1st and 2nd appellants respectively) were convicted by the resident Magistrate Malindi on 3 counts each of which had charged robbery contrary to S. 296(1) of the Penal Code. Each was sentenced to 5 years imprisonment with 6 strokes of Corporal punishment on each count. The sentences were ordered to be served concurrently. There was, however, no order for police supervision which is mandatory requirement under S.344A of the Criminal Procedure Code. These appeals concern both conviction and sentences.

It was undoubtedly proved to the court by the prosecution that on the night of 6th May 1991 a gang of men forced their way into the house of the complainants. They threatened and assulted the complainants and in the course thereof robbed them of an assortment of valuable articles. Thus the fact that the offences of robbed them of an assortment of valuable articles. Thus the fact that the offences of robbery were perpetrated against the complainants was established beyond any doubt.

Against the 1st appellant there was evidence of all police officers that on the 6th May 1991 he was arrested while on the bus where some of the stolen articles were found. Other men who suspected to be in possession of those articles were also on that bus at the time of this arrest.

According to P.W.8 the 1st appellant was in possession of a bag which together with its contents were later positively identified by the complainants as some of the items of which they had been robbed. Importantly aspect to note in connection therewith is that the bag and the 1st appellant's clothes were wet; the bag was close to the seat where the 1st appellant was sitting (on the bus); that when the Policemen asked for its owner, the 1st appellant initially hesitated but later on owned that it was his. On the 7th of May 1991 the 1st appellant led Sgt. Joseph Kioko (P.W.7) to Likoni where the 2nd Appellant (was found and arrested. The 2nd appellant had been together with 1st appellant on the bus from which the 1st appellant had been arrested, but had jumped out of it and had escaped while the policemen were arresting the other men. These were all credible pieces of evidence which the lower court considered in the light of the obviously incredible denials of the appellants. It is instructive to recall that on the morning of 6th May 1988 the 2 men and their other companions appeared to be just returning from the scene of crime when they were found on the bus.

I am satisfied that the guilt of both men on each offence was established beyond reasonable doubt. The sentences imposed are reasonable ones and by no means excessive. I dismiss the appeals. But I append an order to the effect that each appellant shall be under police supervision for 5 years after completing the jail term. It is ordered accordingly.