



REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT NAKURU
(CORAM: GICHERU, MULI & OMOLO, JJ.A.)

CRIMINAL APPEAL NO. 91 OF 1992

BETWEEN

PATRICK GITAU M WANGIAPPELLANT

AND

REPUBLICRESPONDENT

(Appeal from a judgment of the High Court of Kenya at

Nakuru (Justice Tanui) dated 29th May, 1992

in

H.C.CR.A. NO. 27 OF 1992)

JUDGMENT OF THE COURT

Recognition may be more reliable than identification of a stranger; but even when the witness is purporting to recognise someone who he knows, one should remind himself that mistakes in recognition of close relatives and friends are sometimes made. Where, therefore, a conviction of an accused person is founded on his identification, there should be no lurking doubt about its safety in that the same may possibly be based on misidentification.

In this second appeal, the appellant's conviction for the offence of robbery contrary to section 296(1) of the Penal Code was grounded on his identification by John Muchiri Macharia, the complainant. That identification was around mid-night when the complainant was allegedly attacked by the appellant and another. According to the complainant, he had been drinking at Kereti Bar with the appellant and had even bought him some drinks. He had known him for a long time and used to give him casual work. At the time of the robbery, the appellant had a torch and as he and his companion struggled with the complainant, he accidentally directed the torch-light onto himself. Through that light, the complainant was able to see his face. When the complainant screamed, the appellant told him several times in Kiswahili "Wee wacha, Wee wacha". The complainant recognised that voice as belonging to the appellant having known it for a long time. After 15 minutes of struggle during which the complainant was assaulted, his assailants - the appellant and his companion - left him helpless having robbed him of his wallet and wrist

watch. On the following morning, he reported this incident to the police and recorded a statement. According to him, he told the police that the appellant was one of his assailants. He assisted in having the appellant traced and arrested by the police. The gravamen of his testimony was that he recognised the appellant as one of the persons who robbed him by seeing his face through the torch-light and by hearing his voice.

In the circumstances outlined above, both the trial court and the first appellate court held that the appellant was recognised by the complainant as one of the perpetrators of the crime for which he was charged by the latter having seen his face and having heard his voice. Both courts found the complainant credible in this regard. Indeed, the trial court warned itself of the dangers of convicting the appellant on the sole identification evidence of the complainant. It, however, found him credible and therefore believed him. We can find no reason to differ with the two lower courts and we think that there was no lurking doubt about the safety of the appellant's conviction by the same possibly being based on misidentification. In the result, his appeal is dismissed.

Dated and delivered at Nakuru this 1st day of October, 1993.

J. E. GICHERU

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JUDGE OF APPEAL

M. G. MULI

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JUDGE OF APPEAL

R. S. C. OMOLO

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JUDGE OF APPEAL

I certify that this is a true

copy of the original.

DEPUTY REGISTRAR.