



REPUBLIC OF KENYA

IN THE HIGH COURT AT NYERI

CRIMINAL APPEAL NO 5 OF 1990

KAMANJA..... APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Appeal from a Judgment of the Senior Resident Magistrate's Court at
Nyeri, FN Muche Ag SRM Esq, in Criminal Case No 817 of 1989)

JUDGMENT

The appellant was convicted of robbery contrary to section 296(1) of the Penal Code.

The complainant and his family were attacked in their village at 1 am on the material night while asleep.

The gravamen of this appeal is recognition. The appellant argues that he was not properly recognised and that there were contradictions in the evidence of the material witnesses.

In my view, the learned trial magistrate in her well reasoned judgment came to the right conclusion in convicting the appellant as charged.

The appellant was well-known to complainant. They had talked and conversed before the incident. The complainant had given him a lift and had employed him as a casual labourer. They were drinking mates. During the incident the appellant spoke. There was therefore recognition by voice.

PW II knew the appellant before. There was moonlight. She recognized him as he was entering the house. PW III saw him by means of reflected torch lights.

These witnesses informed the police soon thereafter that they had been attacked and robbed by the appellant.

In his testimony the appellant denied the charge. He averred that he was a sleep throughout the night in his house.

The learned trial magistrate accepted the evidence of the prosecution witnesses as true. She rejected that of the appellant. She was justified in doing so. The witnesses had more than enough opportunity in seeing the appellant and recognising his voice. They were not hesitant in informing the police of his identity. The appellant was properly convicted. The grounds of appeal have no merit and are rejected.

The appeal against the conviction is dismissed. The prison term and the reporting order are legal and not excessive.

Appeal dismissed.

Dated and Delivered at Nyeri this 12th Day of October, 1990

P.K. TUNOI

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JUDGE