

IN THE COURT OF APPEAL

AT KISUMU

(CORAM: NYARANGI, GACHUHI & COCKAR JJA)

CRIMINAL APPEAL NO 24 OF 1990

PATRICK ADAMBU WASIO & OTHERS.....APPELLANT

V

REPUBLIC.....DEFENDANT

JUDGMENT

On December 7, 1990, Nyarangi, Gachuhi & Cockar JJA delivered the following Judgment.

This is a second appeal and so only issue of law fall to be raised. The only issue of law which has been urged by each appellant is that of identification. The trial court and the first appellate court have made concurrent findings of fact that the complainant knew each appellant prior to the material day. On the evidence on record, there is sound evidence in support of that finding. We do not accept that there has been any misdirection as regards the identification by recognition. There was light inside the complainant's house before the four appellants forcibly gained entry into the house. There was light all the time the appellants remained within the house. Neither the complainant nor her daughter attempted to resist. So, the conditions for the identification by recognition existed and the result is, as the lower courts have held, positive identification. The complainant and her daughter knew each appellant prior to that day.

The complainant's testimony of the robbery and of rape corroborated that of her fourteenyear old daughter.

There can be no question that part of the property of the complainant which had just been taken from her house during the robbery were found in possession of Patrick Adambu Wasio and Aggrey Auko Akech. Also there is unchallenged medical evidence in support of the charge of rape.

In our judgment, the convictions are supported by evidence which is easy to appreciate and to accept.

The sentences imposed are lawful.

For the foregoing reasons, it is ordered that each of the four appellants' appeal be and is dismissed.

Dated and delivered at Kisumu this 7th day of December, 1990.

NYARANGI

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JUDGE OF APPEAL

GACHUHI

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JUDGE OF APPEAL

COCKAR

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JUDGE OF APPEAL