



**IN THE COURT OF APPEAL**

**AT MOMBASA**

**(Coram: Nyarangi, Gachuhi, JJA & Gicheru Ag JA)**

**CRIMINAL APPEAL NO 157 OF 1988**

**RUGENDO.....APPELLANT**

**VERSUS**

**REPUBLIC.....DEFENDANT**

**JUDGMENT**

July 19, 1989, Nyarangi, Gachuhi, JJA & Gicheru, Ag JA, delivered the following judgment.

The appellant was charged with the offence of robbery with violence contrary to section 296(1) of the Penal Code.

He was found guilty and convicted after a trial at which he gives sworn evidence in his defence. The High Court (Bosire, J) dismissed his appeal after a careful consideration of the grounds which were relied upon by the appellant.

In this second appeal, the substantive issue raised and pressed by the appellant is that the persecution evidence of identification was far from positive. We fear that the appellant's contention in this regard does not avail him. PW2 who was in the company of the complainant, clearly identified the appellant. Another key prosecution witness, PW3, gave chase on seeing the person in jeans trousers driving away. A vehicle was found abandoned in the direction the appellant took. The appellant was pointed out by persons in a ship who observed and saw the direction which the appellant took in an attempt to avoid arrest. The appellant was found hiding himself in a thicket.

The evidence, which is corroborated on by the police officers who effected the arrest, proves that the sight of the appellant was not lost of and that he was arrested in hot pursuit. The appellant's argument that he was not identified is in our view, without substance.

The appellant gave sworn evidence and had the opportunity to cause his witnesses to be summoned to give evidence. He cannot therefore today be heard to complaint that some witness was not called or that the prosecution deliberately left out evidence favourable to his case.

It is clear to us that the a[appellant was convicted on sound evidence.

His appeal fails and is dismissed.

That is the order of this court.

**Dated and delivered at Mombasa this 19th day of July, 1989**

**J.O. NYARANGI**

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**JUDGE OF APPEAL**

**J.M. GACHUHI**

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**JUDGE OF APPEAL**

**J.E. GICHERU**

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**Ag. JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**