

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

CRIMINAL APPEAL NO 147 OF 1987

KIMANZI MASEKI1ST APPELLANT

RICHARD JUMA MUSYOKA2ND APPELLANT

VERSUS

REPUBLIC..... RESPONDENT

JUDGMENT

August 18, 1987 **Torgbor J** delivered the following Judgment.

The appellants Kimanzi Maseki (1st appellant) and Richard Juma Musyoka (2nd appellant) were convicted for attempted robbery and sentenced each to 2 years imprisonment plus one stroke of the cane and police supervision for 5 years after completion of sentence.

I have considered the grounds of appeal filed by both appellants and the record of the evidence. I am of the view that the 1st appellant was not satisfactorily identified as one of the persons who attempted to rob the complainant. The complainant did not identify the 1st appellant and the only evidence of the identification of the 1st appellant was that of PW 2 who was an accomplice and also a minor so that his evidence needed corroboration in law which corroboration was lacking. In the circumstances I do not consider the conviction of the 1st appellant safe and it is therefore quashed and the sentence imposed on him is set aside. The appellant Kimanzi Maseki is therefore to be released forthwith unless otherwise lawfully held.

The 2nd appellant was recognized and stabbed by the complainant during the attempted robbery. The complainant knew the 2nd appellant before hand and recognized him by the light of a torch that flashed on to the 2nd appellant's face at the time of the attempted robbery. The complainant did not immediately give the name or identity of the 2nd appellant to the police when he recognized the incident to them on February 9, 1987 but he explained this by saying that he did not want to alert the appellant. I am satisfied with the explanation he gave. Some consistencies as to his stabbing the 2nd appellant is lent to his story by PW 6 and it seems that if the complainant did not know the name of the 2nd appellant at the time of the offence he appeared to have known his name by the time he mentioned him to the police on March 3, 1987 and also in court when he gave his testimony.

On the evidence I am satisfied that the 2nd appellant was satisfactorily identified as one of those who attempted to rob the complainant on

February 8, 1987 and uphold his conviction and the sentence which in my view is not excessive in all the circumstances of this case bearing in mind also the seriousness of the offence and the punishment imposed by law.

The appeal of Richard Juma Musyoka is dismissed.

August 18, 1987

TORGBOR

JUDGE