



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAKURU**

**APPELLATE SIDE**

**CRIMINAL APPEAL NO.133 OF 1982**

**(From original conviction and sentence in criminal case No.661 of 1982 of the Resident**

**Magistrate's court at Eldoret:**

**BENSON OKWARA NDUBI .....APPELLANT**

**(Original Accused No 2)**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**CONSOLIDATED WITH**

**CRIMINAL APPEAL NO.130 OF 1982**

**(From original conviction and sentence in criminal case No. 661 of 1982 of the Resident  
Magistrate's Court at Eldoret:**

**CHARLES BULEMI..... APPELLANT**

**(Original Accused No.1)**

**VERSUS**

**REPUBLIC..... RESPONDENT**

**JUDGMENT**

The 2 appeals have herein consolidated. The two appellants were charged with robbery contrary to Section 296 of the Penal Code (Cap 63). The particulars read: (1) CHARLES BULEMI (2) BENSON OKWARA NDUBI: On the 10th day of January 1982 at about 9 p.m. at Huruma Estate in Uasin Gishu District of the Rift Valley province, jointly with others not before the court robbed ELEGARTO OMARIA of cash Kshs 400.

On conviction each appellant was sentenced to 4 years' imprisonment with ten strokes of the cane. In addition the appellants were ordered to be placed on police supervision for five years on completion of their sentences. They now appeal against conviction and sentence. The evidence relied upon by the Magistrate is that of PW 1 and his wife PW 2. These witnesses testified that they were attacked at 9 pm

on January 10, 1982 by the two appellants in company of three other persons not before the court. PW 1 had known all the five members of the gang. He recognized the appellants through a light from a lamp. He said appellant Charles entered the house first, followed by appellant Benson and the three persons not before the court. Appellant Charles demanded money and one Henry stabbed him (PW 1) with a knife. PW 1 ordered his wife PW 2 to show the gang where money was. She showed them Kshs 400 which they took. She raised alarm and the gang ran away. She too knew all the five members of the gang. When he heard the alarm, PW 3 came to the scene. He met the gang ran away. She too knew all the five members of the gang. PW 3 helped to take PW 1 to hospital.

In their defence, both appellants denied they knew anything about the robbery. When this appeal came for hearing on September 28, 1982 Mr Amayamu appeared for appellant Benson. Appellant Charles was absent, not wishing to be present. Mr Amayamu's first ground of appeal is that the charge was defective because it omitted the words "used violence ... immediately before or immediately after..." That is so. The state conceded the points but says the defect is curable as the appellants were not prejudiced in their defence. Mr Kimatta for state quoted this piece of evidence from PW 1: "One Henry produced a knife and stabbed me on the face. I asked my wife to give accused all the money she had. She handed Kshs 400 to accused Charles." State Counsel submitted that the above evidence made accused understand they were charged with an offence in which they used violence. I agree with learned State Counsel that the appellants' understood the case and that they were not prejudiced. I hold that in the circumstances of this case the defect in the charged is curable. Even if I were to rule otherwise, I would have ordered a retrial.

Mr Amayamu's other grounds of appeal against conviction were contained at para 2 to 5 of his petition. In short the grounds say the prosecution did not prove the case against appellant Benson, and for that matter appellant Charles. With respect I do not agree with Mr Amayamu's submission. The learned trial Magistrate had overwhelming evidence on which he based his conviction. I have already narrated the facts above.

On sentence Mr Amayamu had grounds 6 to 9 in the petition of appeal. No medical report on PW 1 was necessary for assessment of sentence as is complained of at para 6 of the petition. Nor do I think the award of ten strokes of the cane was improper. The sentence for four years is neither harsh nor excessive. Police supervision after serving sentences is mandatory for the offence charged. For the fore going reasons these two appeals are dismissed. Right to appeal explained.

**Delivered at Eldoret this 5th day of November 1982 .**

**W. MBAYA**

**JUDGE.**