



**REPUBLIC OF KENYA**  
**IN THE COURT OF APPEAL**

**AT NAKURU**  
**crim app 32 of 83**

GITUNGU NGURU ..... APPELLANT

AND

REPUBLIC ..... RESPONDENT

(Appeal from an order of the High Court of Kenya at Nakuru (Bennett J) dated 26th November,  
1971

in

**Criminal Appeal No 284 of 1971)**

**JUDGMENT OF THE COURT**

**CHESONI AG JA**

The appellant was charged with robbery with violence contrary to section 296(2) of the Penal Code (cap 63). He was convicted and sentenced to 14 years imprisonment with hard labour and in addition to receive twelve strokes of the cane.

On September 28, 1981, Herson Egesa (PW 1) and Helena Hakwabe (PW 2) left the Municipal Beerhall together. This was at about 8.30 pm and Herson said it was dark.

When they were still within the hall's compound they met with three men who attacked them. Helen ran back to the hall for help. Herson struggled with one of the man and they fell into a ditch. The other two men ran away. Meanwhile Helena came back with two men. The appellant who had fallen into the ditch with Herson was overpowered, arrested and taken to the police. Herson said that before he was attacked he had Kshs 300 in his pocket which he lost during the attack as he did not have it after the appellant was arrested. He said his assailants had searched his pockets. That was the prosecution case. The appellant's case was that he brushed shoulders with the woman Herson was with and that caused Herson to get hold of him. The appellant apologized and explained that he was drunk. The complainant did not accept the apology and a struggle ensued between them.

The appellant's appeal to the High Court was summarily rejected by Bennett J on November 29, 1971, and we do not know why it had to take ten years for the present appeal to reach this court. Be that as it may, the evidence, pointed to a bar brawl over a woman rather than robbery with violence. The state counsel agrees that it was a case of common assault.

We allow the appeal, quash the conviction and set aside the sentence for robbery with violence contrary to section 296(2) including corporal punishment and also the order for police supervision. We substitute therefore a conviction for common assault contrary to section 250 of the Penal Code. As the appellant has served more than the sentence provided for common assault we order that he be at liberty forthwith.

**Delivered at Nakuru this 22nd day of March, 1983.**

**C B MADAN**

**JUDGE OF APPEAL**

**K D POTER**

**JUDGE OF APPEAL**

**Z R CHESONI**

**AG JUDGE OF APPEAL**

**I certify that this is a true Copy of the original DEPUTY REGISTRAR**