



**IN THE COURT OF APPEAL**

**AT MOMBASA**

**CRIMINAL APPEAL 8 OF 1983**

**(Coram: Potter, Kneller & Hancox, JJ A) CRIMINAL APPEAL NO 8 OF 1983**

**BETWEEN**

**1. HAMIS JUMA )**

**2. JOHN OTIENO ).....APPELLANT**

**AND**

**REPUBLIC .....RESPONDENT**

**(Appeal from a judgment of the High Court of Kenya at Mombasa (Schoffiedl, J) dated 21st December, 1982 in Criminal Appeal No 390 & 352 of 1982)**

**JUDGMENT OF THE COURT**

The two appellants were charged with robbery contrary to Section 296(1) of the Penal Code (Cap 63) the particulars of offence being that the two appellants, on March 22, 1982 at Mtongwe in Mombasa District of the Coast Province, jointly with others not before the court, robbed Said Mohamed of one TV set make general value at Kshs 15,000 and at or immediately before or immediately after the time of such robbery used general violence to the said Said Mohamed. The appellants were convicted by the learned senior resident magistrate at Mombasa (JA Mango Esq) and their appeal to the High Court at Mombasa was dismissed by Schoffied J. The sentence passed by the learned senior resident magistrate on each appellant was five years' imprisonment, with 10 strokes of corporal punishment, and with a five years' reporting order on release. The sentences were ordered to be consecutive to those already being served for other offences. The learned judge did not vary the sentences.

Said Mohamed was asleep in his house at Mtongwe at about 4.00 am on March 22, 1982 when four men broke into the house. Said Mohamed recognised three of the men (who included the appellants) by their appearance as persons he had seen in the Mtongwe area over a period of about two years. He switched on the light just before themen reached him. Mohamed identified the two appellants in the dock. The two appellants hit him in the face with stones. Juma held him while Otieno struck him with his fists. Then Juma cut him across the abdomen with a knife. A knife wound 10 inches in length on the abdomen and a wound on the nose and on the right upper hip were confirmed by a medical witness. He saw the other two of the four men remove the television set. He was in hospital for ten years.

Alfani, Mohamed's cousin, was asleep in his own room when he was wakened by the noise. He only saw one of the intruders. He recognised him but he was not one of the appellants. Alfani confirmed that the

electric light was on, that the television set was missing and that Mohamed was on the ground and was bleeding from the nose, mouth and body. The house door had been broken and large stones had been brought into the house.

On May 26, 1982, Inspector Mutua conducted an identification parade. The two appellants were put in a line up of twelve members and two suspects. Both the appellants were picked out by Mohamed. In *Mwangi Mahika v Republic* [1976] KLR 127, the Court of Appeal held that this was an irregularity, but not necessarily one which caused the evidence of the parade to be entirely disregarded. However, in this case, the two appellants were known to the complainant, and the identification of them at the parade added little to the complainant's evidence that two appellants, who were well known to him, were two of the four robbers. This is a second appeal which is confined to points of law. We have studied with care the grounds of appeal submitted to cause us to doubt the concurrent findings of fact by the two courts below. Accordingly the appeals against conviction are dismissed. The sentences being lawful, we have no jurisdiction to interfere. Accordingly, both appeals are dismissed.

**Delivered at Mombasa this 21st day of July, 1983.**

**K D POTTER**

**JUDGE OF APPEAL**

**A A KNELLER**

**JUDGE OF APPEAL**

**A R H HANCOX**

**JUDGE OF APPEAL**