



**REPUBLIC OF KENYA**  
**IN THE COURT OF APPEAL**  
**AT KISUMU**  
**(CORAM: LAW, POTTER JJA AND HANCOX AG JA)**

**CRIMINAL APPEAL NO 64 OF 1981**

**BETWEEN**

**ONDIGO ODHIAMBO .....APPELLANT**

**AND**

**REPUBLIC .....RESPONDENT**

**(Appeal from an order of the High Court of Kenya at Kisumu (NGScriven J) dated 18th May, 1981  
in Criminal Appeal No.452 of 1981**

**JUDGMENT OF THE COURT**

The appellant, who claims to be seventy five years old, was charged with two other men before the Resident Magistrate at Kisumu with robbery, contrary to section 296(1) of the Penal Code and in an alternative count the appellant alone was charged with handling a blanket stolen in the course of the robbery, knowing or having reason to believe the same to have been stolen, contrary to section 322(2) of the Penal Code. All three accused were convicted of the substantive count and the appellant was sentence to 21/2 years imprisonment and eight strokes of corporal punishment. The appellant appealed to the High Court which summarily rejected his appeal, but in a revision order reduced the sentence of corporal punishment to one stroke “subject to fitness in view of the appellant’s stated aged as seventy five.” The appellant, represented by Mr Behan, now brings this second appeal to this court.

The complainant, who styles himself “Archbishop of Legio Maria Sect” deposed that he was robbed by two men, who assaulted him with a panga and knocked him down. One of the men went into the house and removed from it a bicycle and an old and twice repaired blanket. The other kept guard over the complainant. The complainant was “not allowed to look” as the two robbers, so could not identify them. The two robbers went away with the stolen items. On the following day the complainant’s nephew went to Alego accompanied by policemen. There they found the first and third accused. The first accused led the police to the house of his sister Pauline (PW 3) where the complainant’s bicycle was found. There can be no doubt that this was the complainant’s bicycle, as he produced a receipt for it which stated the frame number. The first accused said that the complainant had given him the bicycle. The third accused led the police to the appellant’s house, where the stolen blanket was found. The appellant said the blanket was his, having been given to him by his son the third accused. All three accused were convicted of robbery on the basis of recent possession. We have no doubt that the appellant was wrongly convicted. He gave an explanation for his possession of the stolen blanket which was not only possibly true but was almost certainly true. Furthermore, the magistrate misdirected himself when he said in his judgment that the

complainant was robbed by at least two people.” The complainant’s evidence is absolutely clear on this point, there were only two robbers.

Clearly this appeal must succeed. The only evidence against the appellant was his recent possession of the stolen blanket, for which possession he gave an immediate explanation which on the face of it was true. There was thus no evidence on which to base the conviction and the appeal to the High Court should not have been summarily rejected.

We order that this appeal be allowed. The conviction of the appellant is quashed and the sentence passed on him is set aside. He is to be set at liberty forthwith unless otherwise lawfully detained.

**Delivered at Kisumu this 8th day of December, 1982.**

**E.J.E LAW**

**JUDGE OF APPEAL**

**K D POTTER**

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**JUDGE OF APPEAL**

**A R W HANCOX**

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**AG JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**