



IN THE COURT OF APPEAL

AT KISUMU

(Coram: Madan, Law & Potter JJ A)

CRIMINAL APPEAL NO. 69 OF 1979

BETWEEN

MENDO CHACHAAPPELLANT

AND

REPUBLIC.....RESPONDENT

JUDGMENT OF THE COURT

The appellant was convicted of robbery contrary to section 296(1) of the Penal Code and sentenced to five years' imprisonment and 10 strokes. His appeal to the High Court was dismissed. This is a second appeal.

During the hours of darkness on the night of 1st November 1978 Samuel Muhere, a shopkeeper in Kihancha market, was woken up by bangs at the door of his shop. There were noises and gun shots fired. A window was broken, a torch flashed and a gun pointed at him through the window. He was told to sit down, which he did. His wife was shot in her hand. The back door of the shop was cut open and about ten people came in. Two of them guarded him. One had a gun and the other a *panga* and a bow and arrows. Some of the raiders went into the shop. Muhere came out after the gang left. He went into the shop to find that it had been cleared out, there was nothing left. All his shop goods, like ready-made clothes, blankets, khaki and other materials had been stolen.

A few hours later on the morning of the same day two administration police officers, Nelson and Ogola, saw the appellant carrying a bundle of new clothes in the bush near a river. He threw down the bundle on seeing these police officers. He was arrested and taken to Kihancha police station.

The appellant denied on oath in Court that he was involved in the robbery. He also swore that he was not found carrying any luggage near the river on 1st November 1978.

The appellant was convicted on the basis of the doctrine of possession of property recently stolen. His appeal to the High Court was dismissed on the same basis, the judge saying "the doctrine of recent possession applied in his case. He did not offer an explanation and he was rightly convicted".

We consider the appellant's conviction cannot be sustained. The goods found in the bundle with which he was arrested were not identified as part of the property stolen from Muhere's shop and, as his conviction was based on recent possession, this was a fatal defect. Properly, State Counsel does not support the conviction.

We allow the appeal, quash the appellant's conviction and set aside the sentence. The appellant is to be set at liberty unless otherwise lawfully held.

Appeal allowed.

Dated and delivered at Kisumu this 13th day of June 1980.

C.B MADAN

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JUDGE OF APPEAL

E.J.E LAW

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JUDGE OF APPEAL

K.D POTTER

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JUDGE OF APPEAL

I certify that this is a true copy of the original

DEPUTY REGISTRAR