IN THE COURT OF APPEAL

AT NAIROBI

CORAM: MWERA, KIAGE & J. MOHAMMED, JJ.A.

CRIMINAL APPEAL NO. 236 OF 2007

BETWEEN

SIMON KANGETHE ....……......……....….. APPELLANT

AND

REPUBLIC .....……………………...……………………. RESPONDENT

(Appeal from the sentence of the High Court of Kenya at Nairobi

***(Ojwang & Dulu, JJ) dated 6th November,* 2007 in**

H.C.CR.A. 41 OF 2006)

****

JUDGMENT OF THE COURT

This is a second appeal by *SIMON KANGETHE* (the appellant) against the judgment of the High Court dated 6th November, 2007 which upheld the conviction and sentence issued by the Senior Principal Magistrate (L.W. GICHEHA) at Thika in Criminal Case No. 2348 of 2005.

Background

The appellant was after trial, convicted by the Subordinate Court sitting at Thika, for the offence of robbery with violence contrary to *Section 296(2) of the Penal Code* and sentenced to death.

The particulars of the offence were that:*"… on the 29th of April in Thika District of Central Province while armed with a panga robbed K M K of a bag containing two bed sheets, one pair of trouser, one novel, one pair of shoes, one shirt, three underwears, all valued at KShs.2,950 and at, or immediately before the time of such robbery used personal violence to the said K M K."*

The prosecution called a total of five (5) witnesses in support of its case. A summary of the prosecution case was that on 28th April, 2005 at about 7.30p.m. the complainant, K M K, PW 1, was on his way home from school. A motor vehicle dropped him off at a place known as Kihiu Mwiri. Upon alighting, he saw a man armed with a *panga*, who hit him on his left shoulder. The assailant pushed him into a coffee bush, and demanded money from him. When PW1 informed the assailant that he had come from school and therefore had no money, the assailant took his bag which contained his personal effects and KShs.200 in cash. He then ordered PW1 to leave without a backward glance.

The complainant reported the robbery incident at Mitubiri Chief's Office. A few days later, a policeman contacted PW1, and told him to accompany him to identify some stolen items which had been recovered. Together with the appellant, they went to the home of J M M, PW2, and PW1 identified one of the bed sheets which had his name inscribed on it. The appellant then led PW1 and the police officer to the home of one *Maina* where PW1's stolen bag was found. The bag contained one bed-sheet, similar to the one which had just been recovered from *Mburu's* house. The recovered bed sheet also had PW1's name inscribed on it. PW1 testified that he had known the appellant prior to the robbery incident; that at the time of the robbery there was moonlight and that he had noticed that the appellant was wearing a black hat and had a scar on his face. He had quite easily recognized the appellant as the robber on the material night.

J M M, PW2, testified that he was a student at [particulars withheld] Primary School. On 30th April, 2005 at 8.00 p.m. while at home, his cousin, the appellant, visited him and was carrying a small bag. The appellant left the bag at PW2's home and informed him that he would collect it later. He later collected it and gave one bed-sheet from the said bag to PW2. Four days later, PW2's Headmaster informed him that he was required for questioning by police officers. When he got home, he was asked to reveal the source of his newly- acquired bed-sheet. The appellant then revealed that the stolen bag and some of the contents were at one Maina's home. He led the police to the said Maina's house where the bag, and some of its original contents were found.

L M K, PW3, a teacher at [particulars withheld] Primary School and PW1's mother, testified that on 29th April, 2005 at about 8pm she was waiting for her son to arrive home from school. Her son, [PW 1] came into their house shivering and in shock. He informed her that an assailant had injured him in the course of stealing all his belongings. PW3 took PW1 for medical attention and reported the matter to the administration police camp the following day.

Benson Mbugua P.C No 45011, PW4, testified that he had been attached to Ngatia Police Post at the material time. He testified that he was on duty on 5th May, 2005 when A.P.C Japheth Ndani, PW5 arrived with the appellant on information that the appellant had robbed the complainant of his belongings. He re-arrested the appellant and took charge of the exhibits linked to the alleged incident of robbery with violence. The appellant was then charged with the offence of robbery with violence.

PW5, the arresting officer, testified that he was stationed at Mitubiri. He received the complainant's complaint that the previous night (29th April, 2005), as he was going home from school, at Kahiu Mwiri, he was accosted by a person who was armed with a *panga*, who took his bag with its contents and KShs.200 in cash. After conducting investigations, he recovered 2 bed-sheets, a bag, a novel and a towel from PW2's house.

The learned Senior Principal Magistrate considered the evidence of the prosecution as well as the unsworn statement of the appellant and convicted and sentenced the appellant to suffer death.

Aggrieved by this decision, the appellant appealed to the High Court against the conviction and sentence. The High Court concurred with and confirmed the findings of the trial court and dismissed the appeal.

Aggrieved by that decision, the appellant filed this second appeal and raised several grounds of appeal vide a supplementary Memorandum of Appeal filed on 23rd May, 2013. The grounds of appeal can be summarized as follows:

> *1) The appellant's detention was unlawful and the trial was therefore a nullity as it contravened Sections 77 (1), (2) (b), (e) and (f) of the retired Constitution.*
>
> *2) The charge sheet was fatally defective.*
>
> *3) The learned Judges failed to exhaustively re-analyze and re- evaluate the evidence.*

4) The conviction based on identification was erroneous.

5) The evidence relied on was contradictory and inconsistent.

At the hearing of this appeal, the appellant was represented by learned counsel, Mrs. Nyamongo. The State was represented by learned Senior Principal Prosecution Counsel, V.S Monda.

Mrs. Nyamongo submitted that the charge sheet was defective as it indicated that the robbery took place on the 29th April, 2005 yet the complainant (PW1) in his evidence stated that the incident took place on the

28th April, 2005. She further submitted that the appellant was not accorded a fair trial as he was arrested on 5th May, 2005 but was not taken to court until 9th May, 2005. She further submitted that witness statements were not availed timeously to enable the appellant to adequately prepare his defence. Further, she averred that the appellant was produced in court about fourteen [14] times before the actual hearing commenced. In addition, the appellant was not availed an interpreter. In her view, therefore, the appellant was not accorded a fair trial as required by the Constitution and the trial was a nullity.

On identification, counsel submitted that the incident took place at night at about 7.30 p.m inside a coffee plantation. She submitted that even though, according to the prosecution witnesses, there was moonlight, the strength of moonlight was not indicated. Counsel stated that the evidence before the court was that stolen items were in the possession of third parties who were not called to testify. Counsel further submitted that the entire evidence was not analysed or re-evaluated by the learned Judges as required to enable the judges to draw their own conclusion. Counsel urged the court to allow the appeal.

Mr. V.S Monda, Senior Principal Prosecution counsel for the State in opposing the appeal, submitted that the evidence before the court clearly points to the appellant violently robbing the complainant. He conceded that there is a variance in the evidence of PW1 and PW3 as to whether the robbery actually took place on 28th April or 29th April, 2005. He, however, submitted that the variance was not prejudicial to the appellant and is curable under *Section 382 of the Criminal Procedure Code*.

On the issue of identification, counsel submitted that there is clear evidence that PW1 was able to identify the appellant. Counsel further submitted that this case is not only hinged on identification but also on recent possession. Counsel submitted that although the appellant claimed that the recovered items were not in his possession, PW2 gave evidence that clearly shed light on how he came into possession of those items, which clearly linked the appellant to the stolen items. Mr. Monda further submitted that the appellant cannot claim that he was not given a fair trial. On the issue of not having been availed an interpreter, counsel submitted that the appellant heard the evidence tendered in court, was aware of the charges facing him and the evidence adduced against him. In addition, he was given an opportunity to peruse exhibits and to defend himself. The learned counsel concluded by saying that an advocate was not provided by the State to represent the appellant as the same was not a requirement in the retired Constitution. He urged the Court to find that the trial was not a nullity but was properly conducted. In the learned counsel's view, the appellant was well guided and was not prejudiced in any way.

He urged the court to uphold the findings of the trial court and the High Court and dismiss the appeal.

We have considered the entire record before us, the grounds of appeal raised herein and the submissions of both counsel. This being a second appeal, by dint of *Section 361 of the Criminal Procedure Code*, our

jurisdiction is limited to dealing only with issues of law, see *GACHERU V R*,

(2005) I KLR 688. As this Court stated in *KARINGO V R, [1982] KLR 219:*

"A second appeal must be confined to points of law and this Court will not interfere with concurrent findings of fact arrived at in the two counts below unless based on no evidence. The test to be applied on second appeal is whether there was any evidence on which the trial court could find as it did. (REUBEN KARANI s/o KARANJA v REPUBLIC [1950] 17 EACA 146)."

The following issues of law fall for determination in this appeal.

1. *Whether the appellant's rights as enshrined under Section 72 (3) and 77 (1) of the retired Constitution were violated;*

2. *Whether the High Court considered the appellant's defence and analysed and re-evaluated the evidence to arrive at independent findings from the trial court;*

3. *Whether the appellant's identification was proper in law; and*

4. *Whether the Doctrine of Recent Possession was applicable.*

On the issue whether the appellant's rights as enshrined under *Section*

72 3) and 77 (1) of the retired Constitution were violated, Counsel for the appellant averred that the appellant was arraigned in court about five [5] days after being arrested. *Section 72 (3)* of the former Constitution provided that:

"72(3) A person who is arrested or detained-

a) ....

b) Upon reasonable suspicion of him having committed, or being about to commit a criminal offence and who is not released, shall be brought before a court as soon as reasonably practicable and where he is not brought before a court within twenty –four hours of his arrest or from the commencement of his detention, or within fourteen daysof his arrest or detention where he is arrested or detained upon reasonable suspicion of his having committed or about to commit an offence punishable by death, the burden of proving that the person arrested or detained has been brought before a court as soon as is reasonably practicable shall rest upon any person alleging that the provisions of this subsection have been complied with."

Section 84 (1) of the retired Constitution permitted a person who alleged that the right to a trial within a reasonable time, among other rights, had been contravened to apply to the High Court for a redress and by *Section 84 (2)* on such application, the High Court:

"May make such orders issue such writs and give such directions as it may consider appropriate."

This Court has had occasion to pronounce on the legal consequences of prolonged pre-charge detention. In *JULIUS KAMAU MBUGUA V R, [2010]*

eKLR, the Court said:

"In our view, it is not the duty of a trial court or an appellate court dealing with an appeal from a trial court to go beyond the scope of the criminal trial and adjudicate on the violations of the right to personal liberty which happened before the criminal court assumed jurisdiction over the accused. However, the trial court can take cognizance of such pre-charge violation of person liberty, if the violation is linked, to or affects the criminal process. As an illustration, where the prolonged detention of a suspect in police custody before being charged affects the fairness of the ensuing trial e.g. where an accused has suffered trial – related prejudice as a result of death of an important defence witness in the meantime, or the witness has lost memory, in such cases, the trial court could give the appropriate protection – like an

acquittal. Otherwise the breach of a right to personal liberty of a suspect by police per se is merely a breach of a civil right, though constitutional in nature, which is beyond the statutory duty of a criminal court and which is by Section 72 (6) expressly compensatable by damages."

From the foregoing it can be concluded that a breach of *Section 72 (3) (b)* does not render a trial a nullity but entitles an accused to a compensation as stipulated under *Section 72 (6)* of the retired Constitution.

On the issue that the appellant was not accorded a fair trial, the appellant averred that an advocate was not availed to him. As pointed out by learned prosecuting counsel, this was not a right that the appellant was entitled to under the retired Constitution.

On the issue that the trial court conducted proceedings in a language that the Appellant did not understand:

Section 77 (2) (b) and (f) of the retired Constitution of Kenya provided that:

"Every person who is charged with a Criminal offence …

(b) Shall be informed as soon as reasonably practicable, in a language that he understands and in detail of the nature of the offence with which he is charged.

(c) ...

(d) ...

(e) …

(f) Shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used in the trial of the charge."

See <u>*JOSEPH KARANJA MBUGUA V R,*</u> *[2007] eKLR* where this court re-

emphasised the need for the Court to ensure that proceedings are conducted in a language that the accused person understands.

In <u>*PATRICK KUBALE WESONGA V R,*</u> *CR.A NO. 204 OF 2005* heard at Kisumu this Court stated:

"As the Court did not state the language used at the trial apart from English, one cannot state for certain that the appellant understood the language that was used to conduct the entire trial. Section 77 (2) (b) of the Constitution, which we have cited above, emphasizes that the offence is explained to an accused person in a language that he understands. Section 77 (2) (f) goes further and states that an accused person is entitled to have an interpreter if he cannot understand the language used in trial. Thus, the need for the trial court to indicate the language in which the trial proceeded cannot be waived even if an accused person has an advocate. As we have stated, there is nothing in the proceedings except one day when the case was not for hearing, to show the language in which the proceedings were conducted. That omission would also vitiate the trial before the subordinate court."

However, departing from the strict need to write down the language used at trial in order to substantiate whether the accused understood the language at proceedings, this Court in <u>*JACKSON LELEI V R*</u>*, CR.A NO. 313 OF 2005*, and also in <u>*ANTHONY KIBATHA V R*</u>*, CR.A NO. 109 OF 2005* stated that the

issue of whether an accused person understood the language used in his trial is one of fact and so an appellate Court in establishing compliance must examine the record. If the language used is not specifically indicated, in our view, the Court must go a step further and consider the level of the accused's participation in the proceedings which will clearly show if he/she understood the same.

In the circumstances of this case it is evident that there was no need of an interpreter as the appellant understood the charge made against him to the extent that he participated fully by cross-examining the prosecution's witnesses and also was able to defend himself in a long and detailed statement.

On the issue whether the charge was defective contrary to *Section 214 of Criminal Procedure Code*, the appellant averred that the charge sheet was defective in that it indicated that the robbery took place on the 29th April, 2005 while the complainant (PW1) in his evidence testified that the incident took place on the 28th April, 2005.

A charge sheet is defective under *Section 214 (1) Criminal Procedure*

Code where:

"(1) Where, at any stage of a trial before the close of the case for the prosecution, it appears to the court that the charge is defective, either in substance or in form, the court may make such order for the alteration of the charge, either by way of amendment of the charge or by the substitution or addition of a new charge, as the court thinks necessary to meet the circumstances of the case:

Provided that -

(i) where a charge is so altered, the court shall thereupon call upon the accused person to plead to the altered charge;

(ii) where a charge is altered under thissubsection the accused may demand that the witnesses or any of them be recalled and give their evidence afresh or be further cross-examined by the accused or his advocate, and, in the last-mentioned event, the prosecution shall have the right to re-examine the witness on matters arising out of further cross-examination."

See *JASON AKUMU YONGO V R*, *COURT OF APPEAL CR.A NO. 1 OF 1983*. *Section 382 of the Criminal Procedure Code* provides:

"Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a court of competent jurisdiction shall be reversed or altered on appeal or revision on account of an error, omission or irregularity in the complaint, summons, warrant, charge, proclamation, order, judgment or other proceedings before or during the trial or in any inquiry or other proceedings under this Code, unless the error, omission or irregularity has occasioned a failure of justice:

Provided that in determining whether an error, omission or irregularity has occasioned a failure of justice the court shall have regard to the question whether the objection could and should have been raised at an earlier stage in the proceedings."

In the instant appeal, we find that the charge sheet was not defective and the anomaly as to the date is curable under *Section 382 of the Criminal Procedure Code*.

On the issue whether the first appellate court re-evaluated and analyzed the entire evidence and drew its own conclusion, it is trite law and practice that a first appellate court is charged with the obligation and an appellant is entitled to expect it, re-evaluate and re-assess the evidence and arrive at its own independent conclusion. See *GABRIEL NJOROGE V R*, *(1982–88) 1 KAR*

1134 at page 1136 where this Court held:

"As this Court has constantly explained, it is the duty of the first appellate court to remember that the parties to the court are entitled, as well on the question of fact as on the question of law, to demand a decision of the court of the first appeal and the court cannot excuse itself from the task of weighing conflicting evidence and drawing its own inferences and conclusions though it should always bear in mind that it has neither seen nor heard from the witnesses and make due allowance in this respect.

See *Pandya v R,* *(1957) EA 336,* *Ruwala v R,* *(1957) EA 570)."* Also see the case of *Okeno v R,(1972) E.A 32*

There is no prescribed rule, method of formula as to what a re-evaluation entails. It is enough that the first appellate court carefully peruses, examines,

weighs and considers the evidence on record. In *SEMBUYA V ALPORTS*

SERVICES UGANDA LIMITED, [1999] LLR 109 (SCU) Tsekooko, JSC said at 11:

"I would accept Mr. Byenkya's submission if he meant to say that the Court of Appeal did not go into details of the evidence, but that is really a question of style. There is really no set format to which the re-evaluation should conform. A first appellate court is expected to scrutinize and make an assessment of the evidence but this does not mean that the Court of Appeal should write a judgment similar to that of the (trial)."

In dealing with the first appeal, the High Court stated as follows:

"We would hold that basically, the learned magistrate stated the applicable law correctly, save that violence as contemplated in s. 296(2) of the Penal Code (Cap. 63), may take place at or immediately before, or immediately after the time of the theft. We are, however, in agreement with the trial court, that the violence in question did accompany the transaction of theft; and therefore it was violence such as much qualify the deprivation of which PW1 was subjected on the material evening, as robbery with violence".

The court further stated:

"In his statement, the appellant said he had woken up from his sleep at 6.00 a.m, on 4th May, 2005 and then went to work. He remained at work (the nature of which was not specified) until 1.00 p.m, when he returned home. He began cleaning his compound and, while he was doing so, he heard screams of people. The appellant said he had then his panga, and gone up to the road, to the place where screams were coming from; but a policemen then asked him about the weapon he was carrying, and arrested him. The police took the appellant to the police station, and he was later charged with the offence, even though he knew nothing about that offence".

Further that:

"It is not possible, in our view, to doubt the truthful of PW1's testimony that he had been attacked and robbed by only one person on the material evening. We accept as true PW1's testimony that it was a moon-lit night, and that he was able to see the one person who attacked him, as the appellant herein. We would not attach much significant to the fact that PW1 did not identify his attacker by name; it is enough, that the items robbed from him were found with PW2 and PW2 who the trial court assessed as a truthful witness, identified the appellant as the person who had possession of the stolen goods, following the robbery incident. Where did the appellant get those goods from? Those goods were stolen and so he was the thief who stole them. The appellant was the robber on the material night."

Based on the above, we, find that the learned Judges of the High Court analysed and re-evaluated the evidence afresh and arrived at their own independent findings. The High Court analysed and re-evaluated the evidence of PW1 and found that the appellant was properly identified and that there was no doubt at all as to the identity of the appellant. Further, the evidence of PW2 and PW3, linked the appellant to possession of the stolen items.

On the issue of whether the appellant's identification was proper and free from error, we note from the evidence on record that the robbery took place at night at about 7.30 p.m. inside a coffee plantation. According to the prosecution witnesses there was moonlight although the strength of the moonlight was not indicated.

It is trite law that evidence of identification must be tested with the greatest care. See *REPUBLIC V TURNBULL, (1976) 3 ALL ER 549*. The evidence must be absolutely watertight to justify a conviction. See *NZARO V R, (1991) KAR 212* and *KIARIE V R, (1984) KLR 739*.

We reiterate the holding in *WAMUNGA V R, (1989) KLR 424*, where this Court held at page 426:

"..it is trite law that where the only evidence against a defendant is evidence of identification or recognition, a trial court is enjoined to examine such evidence carefully and to be satisfied that

In considering this issue, this Court is called upon to determine whether the High Court properly carried out its duty as the first appellate court. The High Court in finding that the prosecution had proved its case beyond reasonable doubt using credible evidence, stated at page 12 of its judgment that:

"It is not possible, in our view, to doubt the truthful of PW1's testimony that he had been attacked and robbed by only one person on the material evening. We accept as true PW1's testimony that it was a moon-lit night, and that he was able to see the one person who attacked him, as the appellant herein. We would not attach much significant to the fact that PW1 did not identify his attacker by name; it is enough, that the items robbed from him were found with PW2 and PW2 who the trial court assessed as a truthful witness, identified the appellant as the person who had possession of the stolen goods, following the robbery incident. Where did the appellant get those goods from? Those goods were stolen and so he was the thief who stole them. The appellant was the robber on the material night."

In *NDUNGU KIMANYI V R, (1979) KLR 282*, this Court at page 283 held:

"…we lay down the minimum standard as follows: The witness upon whose evidence it is proposed to rely should not create an impression in the mind of the court that he is not straight forward person, or raise a suspicion about his trustworthiness, or do(or say) something which indicates that he is a person of doubtful integrity, and therefore unreliable witness which makes it unsafe to accept his evidence."

PW1 during cross examination by the appellant confirmed that he had been robbed on a moon-lit night, and that some of his effects had been found in the house belonging to the appellant and PW2. He stated that he had identified the appellant to the police officer, and it is on that occasion the appellant led him and the police officer to PW2's house and showed them where his other stolen items were kept. He maintained that the appellant had a scar on his face and he had quite easily recognized the appellant as the robber on the material night.

In *ANJONONI V REPUBLIC, KLR 1 [1976-1980]* 1566 at 1568 this Court stated:

"The proper identification of robbers is always an important issue in a case of capital robbery, emphatically so in a case like the present one where no stolen property is found in possession of the accused. Being night time the conditions for identification of the robbers in this case were not favourable. This was, however, a case of recognition, not identification, of the assailants; recognition of an assailant is more satisfactory, more assuring, and more reliable than identification of a stranger because it depends upon the personal knowledge of the assailant in some form or other."

We reiterate the principle that recognition is more satisfactory, more assuring and more reliable than identification of a stranger because it depends on personal knowledge of assailant in some form or other. It is clear from the record that the appellant was properly identified. PW1 recognised him as someone he knew from another village. In addition, PW2 testified that the appellant on the Saturday of 30th April, 2005, came home with a bag which had the recovered property. The appellant did not say how he came to be in possession of the recovered items to which the doctrine of recent possession properly applies as we shall shortly show. In addition, the complainant had identified the appellant to the police officer as one who had a scar on the face. Further, the appellant led the complainant and the police to PW2's house. Both the trial court and the High Court held that the identification of the appellant was positive after considering all the circumstances.

It is also clear that the High Court in re-evaluating the evidence subjected the identification evidence to a proper test to establish that the identification of the appellant was beyond reasonable doubt. The circumstances obtaining in this case were favourable for a positive identification.

In addition to the evidence of identification the two courts below relied on the doctrine of recent possession to convict the appellant and uphold the conviction.

The trial court relied heavily on the evidence of PW2 and stated: *"PW2's evidence forms the foundation of this* On the doctrine of recent possession *Section 4 of the Penal Code* defines

"Possession" as:

(a) "be in possession of" or "have in possession" includes not only having in one's own personal possession, but also knowingly having anything in the actual possession or custody of any other person, or having anything in any place (whether belonging to or occupied by oneself or not) for the use or benefit of oneself or of any other person."

Section 111 of the Evidence Act provides that: *existence of circumstances bringing the case within any exception or exemption from, or qualification to, the operation of the law creating the offence with which he is charged and the burden of proving any fact especially within the knowledge of such person is upon him…"*

In *OGEMBO V R*, *[2003]1 EA*, it was held that: *"For the doctrine of possession of recently stolen property to apply, possession by the appellant of the stolen goods must be proved and that the appellant knew the property was stolen."*

Recently, this Court in *MOSES MAIKU WEPUKHULU & PAUL NAMBUYE NABWERA V R, CR.A NO. 278 OF 2005* (Koome, Mwera & Otieno-Odek, JJ.A.) quoted with the approval what constitutes the doctrine of recent possession in

the case of *MALINGI V R, [1989] KLR 225*:

"By the application of the doctrine the burden shifts from the prosecution to the accused to explain his possession of the item complained about. He can only be asked to explain his possession after the prosecution has proved certain basic facts. That the item he has in his possession has been stolen; it has been stolen a short period prior to their possession; that the lapse of time from the time of its loss to the time the accused was found with it was (from the nature of the item and the circumstances of the case) recent; that there are no co-existing circumstances which point to any other person as having been in possession of the items." [Emphasis added]

The doctrine is a rebuttable presumption of fact. Accordingly, the accused is called upon to offer an explanation in rebuttal, which if he fails to do, an inference is drawn, that he either stole or was a guilty receiver.

As was aptly stated in the case of *HASSAN V R, (2005) 2 KLR 151*:

"Where an accused person is found in possession of recently stolen property, in the absence of any reasonable explanation to account for this possession, a presumption of fact arises that he is either the thief or a receiver."

In the instant case PW2 identified the appellant as the person who was in possession of the bag and who gave him the bed sheet which had PW1's name inscribed on it. Further, PW3, PW4 and PW5 all corroborated PW2's evidence.

In addition, the doctrine of recent possession was clearly applicable and the courts below correctly applied the same. We are satisfied that the evidence adduced before the trial court disclosed the

commission of the offence of robbery with violence and that the appellant was properly convicted as charged.

We find that there is no other reasonable explanation for the possession except that the appellant stole the bed sheets in the course of robbing the complainant. The doctrine of recent possession was clearly applicable and the courts below correctly applied the same. The appellant had no explanation as to how he came into possession of the bag and the contents therein, including bed sheets which had PW1's names inscribed on them. In the circumstances, the trial court and High Court cannot be faulted for applying the doctrine of recent possession. We are satisfied that the courts below proceeded on the correct basis and carefully scrutinized the evidence on identification and came to the right conclusion.

In the circumstances, there is no basis for interfering with the findings of the trial court and the High Court. We accordingly dismiss the appeal.

Dated and delivered at Nairobi this 25th day of July, 2014.

J. W. MWERA

JUDGE OF APPEAL

P. O. KIAGE

JUDGE OF APPEAL

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

DEPUTY REGISTRAR

J. MOHAMMED

JUDGE OF APPEAL