IN THE COURT OF APPEAL

AT NYERI

(CORAM: VISRAM, KOOME & ODEK, JJ.A.)

CRIMINAL APPEAL NO. 220 OF 2012

BETWEEN

PETER N. WANJOHI WANGECHI ……APPELLANT

AND

REPUBLIC ……....RESPONDENT

(An appeal from the judgement of the High Court of Kenya at Nyeri

(Sergon & Wakiaga, JJ.) dated 8th June, 2012

in

H.C.CR.A No 79 of 2009)

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JUDGEMENT OF THE COURT

[1] This is a second appeal, and that being so, by dint of the provisions of ***Section 361 (1) (a)*** of the ***Criminal Procedure Code***, only matters of law fall for our determination unless it is demonstrated that the two courts below failed to consider matters they should have considered or looking at the entire case, their decisions on such matters of fact were plainly wrong in which case this Court will consider such omission or action as matters of law. The appellant's conviction solely turned on the doctrine of recent possession. To conceptualize the case that faced the appellant, it is imperative to repeat the background information and the evidence that led to his conviction and sentence.

[2] Peter Wanjohi Wangechi, the appellant was charged with three main counts of robbery with violence contrary to ***Section 296(2)*** of the ***Penal Code*** and two alternative charges of handling stolen property contrary to ***Section 322(2)*** of the ***Penal Code*** at the Chief Magistrate's Court at Nyeri. The particulars of the first count stated that on 19th November, 2007 at Asian Quarters Nyeri in Nyeri District within the then Central Province, the appellant jointly with others not before court while armed with dangerous weapons namely AK 47 Rifles and Pistols robbed Venichand Samat Shah of a Motor Vehicle Registration No KAG 893N make Toyota Hilux Pick Up and a Mobile Phone make Nokia 1110 all valued at Ksh 605,000/= and at immediately before or immediately after the time of such robbery threatened to use actual violence to the said Venichand Samat Shah.

[3] The particulars of the second count were that on 19th November, 2007 at Asian Quarters Nyeri in Nyeri District of the Central Province, the appellant jointly with others not before court while armed with dangerous weapons namely AK 47 Rifles and Pistols robbed Rakccha Shah of two Gold bangles, one Gold Necklace, one Gold ear ring and one Camera make Asaipentax all valued at Kshs. 70, 000/= and at or immediately before or immediately after the time of such robbery threatened to use actual violence to the said Rakccha Shah.

[4] The particulars of the third count were that on 19th November, 2007 along Nyeri-Nairobi road at Wambugu Farm in Nyeri District within the then Central Province, the appellant jointly with others not before the court, while armed with AK 47 Rifles and Pistols robbed Felix Kebuka Wachira of a Motor Vehicle Registration No KAJ 561 X Toyota Corolla, two mobile phones make Motorola L6 serial 359405-00-139898-9 and a Siemens mobile phone whose serial number was unknown, a wallet containing an identity card, electors card and personal documents; a wrist watch make not known, cash Kshs. 4, 000/= and 2 kilograms of meat all valued at Kshs. 275, 400/= and at or immediately before or immediately after the time of such robbery threatened to use actual violence to the said Felix Kebuka Wachira.

[5] The particulars of the alternative charges stated that on 21st November, 2007 at Kangemi Estate Nyeri in Nyeri District within the then Central Province, the appellant otherwise than in the course of stealing dishonestly retained 2 Gold bangles and one Gold Necklace all valued at Kshs. 35, 000/= the property of Rakccha Shah knowing or having reasons to believe them to be stolen goods. Related to the said charge was that on 21st November, 2007 at Kangemi Estate Nyeri in Nyeri District within the Central Province, otherwise than in the course of stealing, the appellant dishonestly retained one mobile make Motorola L6 serial number 359405-00-139898-9 valued at Kshs. 8,000/= the property of Felix Kebuka Wachira knowingly or having reasons to believe it to be stolen goods.

[6] The appellant pleaded not guilty to all charges. To prove the case against the appellant, the prosecution called a total of seven witnesses. It was the prosecution's case that on 19th November, 2007 at 6.30p.m. PW1, Venichand Samat Shah (Venichand) a businessman in Nyeri town, closed his business and left for his home accompanied by PW2, Ganga Samat Shah (Ganga-his mother) and PW3, Rakccha Venichand (Rakccha-his wife) in one vehicle registration number KAG 893 M, pick up which he drove to their house. Upon arrival at their residence at the Asian Quarters, Venichand stopped the vehicle outside the gate and alighted to open it. By this time darkness had almost set in. Suddenly, seven people emerged and surrounded them. As Venichand was trying to open the gate, he noticed a group of seven men; one was armed with a big gun, while two were armed with pistols. The assailants ordered Venichand to surrender to them the vehicle keys and his mobile phone, and he promptly complied. Venichand, Ganga and Rakccha were then pushed into the compound and into the house before being ordered to lie down as the gang demanded for money. When the robbers did not get any other money from the victims, they ransacked the house for valuables and made away with an Asaipentax camera; a Gold Necklace and 2 pairs of Gold Bangles belonging to Rakccha, and a pair of Gold bangles belonging to Ganga. Venichand was also robbed of a Nokia 1100 phone valued at Kshs. 4,500/=. The robbers also attempted to carry away a TV and Radio but abandoned these items and made away with Venichand's vehicle.

[7] It was Venichand's testimony that as the robbery continued, the assailants, kept on hitting him and also Ganga and Rakccha coupled with threats of dire consequences in the event they screamed. After the robbers left, he switched on the security alarm, prompting a response from the police who arrived shortly thereafter. None of the victims of the robbery was able to identify any of the attackers. Venichard's Motor Vehicle was recovered intact by the police on the same night of the robbery; and was returned to him the following day. A few days after the robbery, a police officer visited Venichand's shop with a gold necklace and 2 gold bangles which he and Rakccha identified as the items which were stolen on the material date. Venichand was certain that the Bangles in question were the ones his wife had worn for the last 20 years. According to him, the Bangles were given to his wife on their wedding day. Venichand also testified that he was informed by the police officer that one person had been arrested in connection with the robbery. He was requested to go for an identification parade, he however was not in a position to identify any of the persons who had robbed him.

[8] On the same evening, shortly after the robbers left the residence of Venichand, Ganga and Rakccha, PW 4 Felix Kebuka Wachira (Felix), an Advocate of the High Court of Kenya based in Nyeri was making his way to his house located at Wambugu Farm off the Nyeri-Karatina Road. He was driving a Toyota Corolla Registration Number KAJ 561 X. Upon reaching a turn off to his house, he made a right turn and joined an earth road which would lead him to his destination. A few meters ahead, he saw another motor vehicle with its headlights on. He dimmed his headlights and slowed down as the road was narrow and could only allow one vehicle at a time to pass.

[9] As Felix drew closer to the stationary vehicle, he realized he could not pass thereby being forced to stop. Five armed men emerged from the second vehicle and ordered him to get out of his vehicle. He obliged and got out with his hands raised up. Felix testified that all the men were armed with guns. They ransacked his pockets and took away Ksh 4,000/= in cash, personal documents including his national identity card, two mobile phones (make-Motorola L6 valued at Ksh. 13,000/= and Siemens A35 belonging to his son), a wrist watch and some meat. The robbers ordered him into his car boot, an order which he was hesitant to obey as the boot compartment was small. He was finally forced in and the robbers closed it. Felix tried to plead with the thugs to open the boot to no avail. They drove off in his vehicle on a journey punctuated by both smooth and rough stretches before parking the vehicle at an unknown destination; they alighted and abandoned the car with Felix in the boot. While still in the boot of his car, he heard people asking what his vehicle was doing at that place. This is when he decided to shout for help, alerting the people who were next to his vehicle that he had been locked up in the boot. The good Samaritans managed to open the boot and rescued him, he realized he had been abandoned along Kiamuriru Road. Although he did not suffer any physical injuries he was traumatized by the whole episode. Police Officers arrived at the scene moments later and took away his vehicle to the police station. A week later, he was called by the police and told some items were recovered, he was shown a mobile phone which resembled the one that was stolen from him. He was also informed that a suspect had been arrested. This witness too did not identify any of the robbers.

[10] PW 5, CPL Lenny Wesonga (CPL Wesonga), testified that on 21st November, 2007 at 11:00 a.m., he was at his office with other officers when the commanding officer IP Kilemi (IP Kilemi) received information that a suspected robber in these two incidents was a known resident of Kangemi Estate in Nyeri. CPL Wesonga was mobilized by IP Kilemi together with other officers including PC Macharia to go to Kangemi in search of the suspects. On their way to Kangemi, they met a suspicious looking person walking away from Kangemi Estate. He was stopped and searched whereupon a Motorola L6 mobile phone, a gold chain, wrist watch-make Geneva, 2 gold plated bangles and a consolidated bank plate were found in his possession. The suspect was taken to Nyeri Police Station for further interrogation. After investigations it was discovered that the items which were recovered from his possession were part of the ones robbed from Venichand, Ganga and Rakccha.

[11] PW 6, CIP Peter Kilemi (CIP Kilemi) was attached to the Criminal Intelligence Unit in Central Province; his brief at the time was patrol and surveillance duties which entailed recording information from police communications being circulated. On 19th November 2007, between 6.30p.m.-7.30p.m, he received a report of a robbery that had taken place at a house at the Asian Quarters in Nyeri town. He detailed CPL Mwaniki, CPL Musonga and PC Nyaga to proceed to the scene of the said robbery. On 21st November 2007, CIP Kilemi received information from an informer that there was a house located at Kangemi Estate in Nyeri where one of the robbers who had participated in the robbery in question was residing. CIP Kilemi testified that he was shown the house and that on the same day he proceeded to the Estate accompanied by CPL Mureithi, CPL Musoga (sic), PC Nyaga and PC Wachira. As the officers were approaching the Estate, they met the appellant leaving the house and stopped him. According to CIP Kilemi the description the informer had given of the suspect matched with the features of the appellant; namely a young black, slim man. They searched the suspect and recovered a Motorola phone handset from his pocket and a pen (green and white in colour) branded in Consolidated Bank colors, golden bangles, a wrist watch, and a golden necklace. The appellant was escorted to Nyeri Police Station. According to CIP Kilemi he instructed CPL Mureithi to ascertain the ownership of the items which had been recovered from the appellant. No inventory was taken for the recovered items.

[12] PW7, SGT Jacob Mureithi (SGT Mureithi), the Investigating Officer testified that on 19th

November, 2007 at 6.30p.m. while on duty he received a report of a robbery which had been reported by Kenya Service Guards. According to the report, the robbers comprised of seven men armed with AK 47 Rifles and Pistols who had attacked Mr. Shah (Venichand); a businessman in Nyeri town at his residence at Asian Quarters. The robbers had robbed Mr. Shah (Venichand) of cash and escaped in his Motor Vehicle Registration Number KAG 893 N Toyota Hilux Pick Up. At the same time a further report was made through the Police Control Room Nyeri that several people had been car jacked by the same gang along the Nyeri-Karatina road near Kiamuiru. On receiving the report, SGT Mureithi, the OCPD, OCS and other officers mounted a search,Venichand's motor vehicle was found abandoned at the Kiamuiru area.

[13] SGT Mureithi was also involved with the arrest of the appellant which he effected alongside CIP Kilemi, PC Wesonga, PC Nyaga and PC Wachira. CIP Kilemi in charge of the Criminal Intelligence Unit called Sgt Murithi, PC Wesonga, PC Nyaga and PC Wachira to his office. He informed them that he had information about a suspect, who was said to have been involved in robberies that occurred on 19th November, 2007 and the suspect was living at Kangemi Estate. The officers proceeded to the Estate on foot. Just before they reached, they saw a young man (the appellant) walking towards them. According to SGT Mureithi, CIP Kilemi confirmed to them that the appellant matched the description they had been given by an informer. On seeing the officers, the appellant seemed undecided as to his next course of action. CIP Kilemi seized the appellant and subjected him to a search leading to the recovery of a Motorola L6 mobile phone and a ball pen branded with Consolidated Bank colours, a gold necklace and two golden bangles.

[14] The police officers also carried out a further search in a house belonging to the appellant but nothing was recovered. The appellant was then taken to the police station for further investigations. SGT Mureithi, summoned all the victims of the two robberies. Venichand and Ganga identified the golden bangles and golden necklace which were found in possession of the appellant as the ones he used to see his wife wearing for nearly 20 years. Felix also identified the Motorola L6 Mobile Phone handset which was found in possession of the appellant as his. None of the victims of the robbery was able to identify the appellant.

[15] After the close of the prosecution's case, the appellant was put on his defence. He gave unsworn statement of defence and did not call any witness. He denied having been involved with the robbery and that any items were found in his possession. He claimed that the police demanded to be shown his house which they searched and did not recover anything. The learned trial magistrate was satisfied the prosecution proved its case to the required standard, the appellant was convicted on the three main counts of robbery with violence. He was sentenced to death for count 1 but the sentences in counts 2 and 3 were held in abeyance.

[16] Aggrieved by the decision of the trial Magistrate, the appellant lodged an appeal to the High Court. By a judgement dated 8th June 2012, the High Court (Sergon & Wakiaga, JJ.) dismissed the appellant's appeal hence the present appeal which was initially predicated on one ground to wit:-

- ***The Learned Judges of (sic) High Court went into error in holding that the doctrine of recent possession applied in this case while there was no acceptable evidence as to the search of the suspect and recovery of the allegedly stolen property.***

[16] The above ground was augmented by a supplementary Memorandum of Appeal dated 12th November, 2014, filed pursuant to ***Rule 65(2)*** of the ***Court of Appeal Rules*** to wit:-

- ***The Learned Judges of the Superior Court erred in law in not holding and finding that the alleged recovery of the stolen items on the appellant by the Police was not free from error as the evidence of Police on the recovery was not only contradictory but also did not prepare any inventory on the alleged recovery on such a serious charge. A miscarriage of justice was thereby occasioned.***

- ***The Learned Judges of the Superior Court erred in law in not finding and holding that the***

identification of the recovered items by the complainants was not free from error as they bore no special marks that could make the complainants identify them or distinguish them from any other similar items owned by others and no other proof of purchase or ownership was produced. A miscarriage of justice was thereby occasioned.

- ***In so far as, the evidence of the Police as to the alleged recovery of the stolen items is contradictory, there was no inventory prepared and the evidence as to identification and ownership of the stolen items is not free from error, the Learned Judges of the Superior Court erred in holding that the doctrine of recent possession is applicable in this matter. A miscarriage of justice was thereby occasioned.***

- ***The Learned Judges of the Superior Court erred in not finding and holding that the Learned Trial Magistrate had misdirected herself on the appellant's alibi by putting a burden on him. A miscarriage of justice was thereby occasioned.***

- ***The Learned Judge of the Superior Court erred in affirming the decision of the Lower Court without finding and holding that there was doubt in the prosecution case which ought to have been resolved in favour of the appellant.***

[17] During the hearing of this appeal, Mr. Gikonyo learned counsel for the appellant, elected to combine and argued all the grounds together. He submitted that the recovery of the alleged stolen items was not free from error; the evidence of the police in that regard was contradictory; the Police did not prepare an inventory of recovered items; despite the fact that the search for the alleged stolen items was purportedly carried out by five officers on the appellant, (CPL Wesonga) did not recover any stolen items from the appellant. The items were recovered by CPL Wesonga's colleagues. It was also counsel's submission that no mention was made of the precise location where the stolen items were recovered; and that the officers did not prepare an inventory of the recovery; also a senior police officer acknowledged that it was an oversight on his part not to prepare an inventory on the items recovered from the appellant.

[18] Submitting on the inconsistency of evidence, counsel for the appellant stated it was notable in respect of the evidence of PW 7, (SGT Mureithi) and PW 6, CIP Kilemi, SGT Murithi testified that they went to the appellant's house for purposes of conducting a search; while CIP Kilemi stated that they did not reach the house. Thus the evidence of recovery of stolen items from the appellant was not safe to sustain a conviction. Such evidence is supposed to be free from contradictions or errors. Moreover the recovered items did not bear any distinct marks which would enable the respective complainants identify them as their own. Mr. Gikonyo urged us to find the High Court failed to re-evaluate the entire evidence and in particular the appellant's defence, but the Court was quick to shift the burden of proof to the appellant. Finally, counsel submitted that had the two courts below directed their minds to the guiding principles of law and precedent they would have arrived at a different conclusion. Counsel cited ***CR. A. NO. 384 OF 2009; JOHN MUTURA MURAYA vs REPUBLIC***, where this bench observed the following regarding evidence of recovery of stolen items;

"In this case the prosecution did not prove that the torch in question was recovered in the appellant's house. This is because APC David admitted that he did not take an inventory of the items recovered from the appellant's house. Therefore, the doctrine of recent possession could not be invoked. The two courts below misdirected themselves in terms of the evidence of the alleged recovery of the torch and concluded erroneously that the appellant failed to give an explanation of being in possession of the torch. It was incumbent for the prosecution to first establish that the appellant was in possession of the stolen torch before the burden could shift to the appellant to explain his possession".

[19] This appeal was opposed by Mr. Kaigai, learned Assistant Deputy Public Prosecutor, appearing for the State. He submitted that the trial court that heard and saw the witness testify, was satisfied that the three police officers who were the key witnesses that is CPL Wesonga, CIP Kilemi and SGT Mureithi were truthful witnesses. Mr. Kaigai pointed out that the only blemish on this officer's testimony was the admission that an inventory had not been taken of the items which were recovered from the appellant. He argued that identity of the appellant was purely based on the fact that he was found in possession of items

that were robbed from the complainants a few days earlier and the items were positively identified by the victims of robbery. Further under ***Section 111*** of the ***Evidence Act*** the appellant was enjoined to offer an explanation of how he came to be in possession of stolen items. Counsel distinguished the facts in the case of ; ***John Mutura Muraya vs R, (suppra)*** from the present one by pointing out that in the case of John Muraya there was only one witness and the alleged recovered item was in the appellant's home, while in the present appeal there were three witnesses and the items were recovered in possession of the appellant and not from his home.

[20] We stated in the outset that in a second appeal this Court will not interfere with concurrent findings of fact by the two courts below unless such findings are based on no evidence, or are based on a misapprehension of evidence; or the courts below are shown to have demonstrably acted on wrong principles in making the findings. See ***Mwita –vs- R, (2004) 2 KLR 60*** and ***Kaingo –vs- R, (1982) KLR 213*** at page 219 where this court said that:-

> ***"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 courts 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 Karari C/O Karanja –vs- R (1956) 17 EACA 146)"***.

See also ***Daniel Kabiru Thiong'o –vs- R, - Nyeri Criminal Appeal No 131 of 2002 (unreported)*** where this court stated that:-

> ***"An invitation to this court to depart from concurrent findings of fact by the trial and first appellate court should be declined by the second appellate court unless there are compelling reasons for doing so".***

[21] As the summary of the above facts demonstrate, this appeal turns primarily on the application of the doctrine of recent possession of stolen items. None of the complainants identified the assailants. An issue was raised regarding an inventory of items allegedly recovered from the appellant. It is not contested that the police officers investigating the appellant's case failed to keep an inventory of the items that were recovered from the appellant. As it will become clearer from our further analysis of the evidence of the four victims of the robbery, we are satisfied the two courts below were spot on with the conclusions they drew that the victims of the robbery were able to identify their personal effects that were violently stolen on 19th November, 2007 by an armed gang. It is also clear the appellant was arrested by police following information from an unnamed informer. The two courts below accepted the evidence by the three police officers of how they arrested the appellant in possession of items that were stolen from the complainant, and also the fact that the victims of the robbery were able to positively identify those items. These conclusions were challenged by counsel for the appellant.

[22] In ***Isaac Ng'ang'a Kahiga alia Peter Ng'ang'a Kahiga –vs- R, - Criminal Appeal No. 272 of 2005***, this court stated as follows with regard to the doctrine of recent possession:

> ***"…. It is trite that before a court of law can rely on the doctrine of recent possession as a basis for conviction in a criminal case, the possession must be positively proved. In other words, there must be positive proof, first: that the property was found with the suspect, secondly that the property is positively the property of the complainant; thirdly, that the property was stolen from the complainant. The proof as to time, as has been stated over and over again, will depend on the easiness with which the stolen property can move from one person to the other".***

[23] On our part, we find no justifiable reasons for departing from the concurrent findings of the two courts below. The three items that were found in possession of the appellant can be described as personal items. For instance the gold chains and bangle that counsel said had no mark on them, is answered when one looks at the evidence in chief by PW 3, who stated as follows:-

"After 1 week a police officer came to the shop and showed me MFI 1 and MFI 2 which I identified as mine. I have had MFI 1 and MFI 2 for 25 years…"

Also this is what PW 1 the husband of PW3 stated in his evidence regarding the same items:-

"Later on a police officer visited our shop with gold necklace and 2 gold bangles which I and my wife identified as the items robbed from us that night. Gold necklace identified and marked as MFI 1. I hold bangles identified specifically and marked MFI 1 and MFI 2 have no marks but my wife has been wearing them for the last 20 years".

[24] The appellant did not claim the items belonged to him, nor did he given an explanation of how he came to be in possession of the same. We are of the view the two courts below were correct on their conclusion that there was positive identification and the mere denial by the appellant that he was not found in possession of the items was dislodged by the strong case by the prosecution's witnesses. The stolen items were properly reported and recorded with the police when the robbery occurred. The owner of the items identified them and her husband who said he had been seeing his wife wearing the chain and bangles for over 20 years was in our opinion credible evidence of identification that was not challenged. We also do not see why three police officers namely PW 5 (CPL Wesonga), PW 6 (CIP Kilemi) and PW 7 (SGT Mureithi) would gang up to against the appellant, and plant on him personal property that were stolen from the complainants. Accordingly, we find that the doctrine of recent possession was properly invoked, the burden shifted on the appellant to offer an explanation of how he came to be in possession of items recently stolen from the complainants.

[25] We think we should now address the issue of the inventory that is intricately connected to recovery of stolen items under the doctrine of recent possession. Mr. Kaigai, submitted, and we agree with him, that it is important in a criminal case for the investigating officer to maintain an inventory of items recovered. However in this case, no inventory was kept, but that notwithstanding, two courts below were satisfied with the evidence of the three police officers who conducted a search on the appellant, found the items and arrested him. Would failure to prepare an inventory render this conviction of the appellant unsafe? We agree with the State that whereas it is prudent for investigating officers who arrested the appellant herein to take an inventory of what was recovered from him; failure to do so did not compromise the evidence against the appellant as there was recorded report at the police station confirming robbery of similar items. This is a further distinguishing factor from the case of ***John Mutura (supra)*** because the alleged stolen torch was found under a door of the appellant's house. Moreover, in the ***John Mutura's*** case, he was convicted principally based on the evidence of identification by recognition which was reinforced by the recovery of a torch under the door of a house in a homestead. In the case of ***John Mutura,*** an inventory was necessary to show the persons who used to occupy the house or homestead in order to rule out a possibility of another person slipping the torch under the door or being responsible for the torch. The police officers in the instant case compared the items they recovered from the appellant against their records. This comparison and the identification of the items thereafter formed the basis of the case against the appellant. This is what PW 7 (SGT Mureithi) told the trial court in a pertinent segment of his evidence:-

> ***"I checked the OB and noted that there was a robbery on the entry of 19/11/07 whereby the complainants lost their gold bangles and gold necklace. I notified the OCS and I found that witness statements had already been recorded in the matter. I was assigned to handle the file. I summoned PW 1 (Venichand) and PW 2 (Ganga) who came to the police station and identified pex 1 and pex 2. PW 3 (Rakccha) also came and identified pex 1 and pex 2. I also saw the witness statement of Mr. Kebuka Wachira Advocate who I summoned. He came and identified pex 3 as his mobile phone which he was robbed at Kiamuiru area".***

[26] While considering the evidence in its entirety the learned trial magistrate remarked as follows regarding the evidence of PW 5, (CPL Wesonga), PW 6, (CIP Kilemi) and PW 7, (SGT Mureithi) on this aspect:-

> ***"The court is convinced that PW 5, PW 6 and PW 7 were truthful witnesses and their evidence cogent".***

We are mindful that we did not have the benefit of seeing the three witnesses giving their testimony; also in ***Kisumu Criminal Appeal No 404 of 2009 - George Otieno Dida&Another –vs- R, [2011] eklr*** this court had this to say in this regard:-

> ***"The trial court, unlike an appellate court, has the benefit of seeing and hearing witnesses testify. It is better placed to assess credibility of those witnesses".***

See also ***Ogol –vs- Murithi, [1985] KLR 359."***

[27] We find no major inconsistencies in the evidence of the three witnesses regarding the search, recovery and the arrest of the appellant. In the result, we find this appeal devoid of merit and hereby dismiss it and affirm the conviction and sentence meted out against the appellant.

Dated and delivered at Nyeri this 17th day of December, 2014.

ALNASHIR VISRAM

…….

JUDGE OF APPEAL

MARTHA KOOME

……..

JUDGE OF APPEAL

J. OTIENO-ODEK

……..

JUDGE OF APPEAL

I certify that this is a

true copy of the original.

DEPUTY REGISTRAR