



**REPUBLIC OF KENYA**  
**IN THE COURT OF APPEAL OF KENYA PEAL AT NYERI**

**Criminal Appeal 187 of 2003**

**STEPHEN KINOTI.....APPELLANT003**

**AND**

**REPUBLIC .....RESPONDENT**

*(Appeal from a conviction, judgment and sentence of the High Court of Kenya at Meru (Juma & Tuiyot, JJ.) dated 14.02.2002*

**in**

**H.C.CR.A. NO. 20 OF 2000)**

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**JUDGMENT OF THE COURT**

This is a second appeal by **STEPHEN KINOTI** (hereinafter “*the appellant*”) from the judgment of the High Court of Kenya at Meru (Juma and Tuiyot, JJ.) dismissing his appeal from his conviction and sentence of death for robbery with violence contrary to **section 296(2)** of the **Penal Code** by the Senior Resident Magistrate P.M. Ndungu in **Criminal Case No. 2550 of 1998** in the Chief Magistrate’s Court at Meru.

The particulars of the offence charged were that on the *17<sup>th</sup> day of February 1998* at Kaguma Trading Centre, Gatimbi Location of Meru Central District jointly with another not before court while armed with an offensive weapon namely a knife robbed **Simon Kirema** of cash *Kshs.8,000/=* and at or immediately before or immediately after the time of such robbery wounded the said **Simon Kirema**.

The facts presented to the trial court by the prosecution were brief. The complainant **Simon Kirema** (PW1) is a farmer and also a businessman dealing in building materials. He lives at Tigania. On the material day at about 1 p.m. on his way home from Kaguma he met three people whom he knew well – among them the appellant, whom he had known since childhood and was in the same business with him. The other one was **Guantai**. After a brief salutation, the appellant without any prompting and before uttering a word advanced towards PW1 and stabbed him severally with a knife on the head, stomach, neck, on the back and in the hand. After the brutal attack the appellant told PW1 that he “*wanted money and not questions*”. As PW1 lay on the ground the appellant ransacked PW1’s pockets and removed therefrom *Shs.8,000/=* and fled. Some members of the public helped PW1 to hospital where he was admitted in a serious condition. **Stephen Mukira** (PW5), a clinical officer at Meru Hospital treated PW1. PW5 testified that PW1 had suffered long cut wounds on the right forehead, on the back, stomach and in the hand. There were a total of eight cut wounds on PW1’s body. PW1 was admitted for five days. Those injuries were contained in a P3 form which was tendered before the trial court as an exhibit.

**Daniel Muthuri** (PW4) was the most important witness for the prosecution. He saw the appellant stab PW1 with a knife but he feared to go near him. He only shouted from far. The witness had known both PW1 and the appellant before the incident. His evidence before the trial court was consistent.

**Fredrick Riungu** (PW2) worked at Kaguma quarry. He met PW1 lying by the roadside and groaning in pain. He was bleeding profusely. He rushed him to hospital. He was assisted in doing so by **Juliana Gal**.

The appellant denied committing the offence charged and averred that he was arrested for allegedly having sold a quarry.

Counsel for the appellant, Mr. Ghadially, complained before us that the evidence of the complainant, PW1, was not reliable and free from possibility of error in that PW1 did not promptly give the appellant's name to the police. Mr. Ghadially further submitted that it was possible that there existed a grudge between the appellant and PW1 and therefore the case was entirely a frame up and the trial court should have held so. Moreover, he argued the evidence of identification herein was not reliable.

It is trite that this Court on a second appeal will not interfere with concurrent findings of facts made by the two courts below unless it is apparent on the evidence that no reasonable tribunal could have reached that conclusion, which would be the same as holding that the decision is bad in law.

The evidence on record shows that PW1 knew his assailant well. This was therefore a case of recognition. PW4 who had also known the appellant witnessed the brutal knife attack on PW1. Moreover, the incident took place in broad day-light. The two courts below made concurrent findings as to the time when the robbery took place and a further finding that the circumstances were favourable for proper identification or recognition.

The complainant (PW1) and PW4 were believed by the two courts below and particularly the trial court which had the advantage of gauging their credibility by watching their demeanour and hearing them testify. In the circumstances we have no reasons whatsoever to disbelieve them at this stage. Moreover, on our own independent assessment of the evidence tendered before the trial court we are of a firm belief that the conviction is safe and we uphold it.

We think that the grounds of appeal canvassed on behalf of the appellant are without merit and we reject them. In the result this appeal is dismissed.

*Dated and delivered at Nyeri this 19<sup>th</sup> day of May, 2006.*

**P.K. TUNOI**

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**JUDGE OF APPEAL**

**E.O. O'KUBASU**

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**JUDGE OF APPEAL**

**E.M. GITHINJI**

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**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**