



REPUBLIC OF KENYA  
IN THE COURT OF APPEAL OF KENYA  
AT NAIROBI

Criminal Appeal 128 of 2006

JIMMY WANJOHI WANJIKU.....APPELLANT

AND

REPUBLIC.....RESPONDENT

*(Appeal from judgment of the High Court of Kenya at Nairobi (Lessit & Ochieng JJ) dated 1/7/04*

in

H.C.CR. A. NO. 285 of 2001

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JUDGMENT OF THE COURT

This is a second appeal and so only matters of law can be raised.

The appellant **JIMMY WANJOHI WANJIKU** was convicted by the Principal Magistrate, Muranga, of robbery with violence contrary to **section 296 (2)** of the Penal Code and sentenced to death. His appeal against both conviction and sentence to the High Court of Kenya at Nairobi (Lessit and Ochieng JJ) was dismissed on 1<sup>st</sup> July, 2004.

The grounds of appeal canvassed before us by Mr. Kiptoo for the appellant may be summarized as follows; that the first appellate court erred in not carefully evaluating the evidence on identification; that the

identification parades were not properly conducted and that the appellant was not positively identified by any prosecution witnesses.

Thus, the basic issue in this appeal and also in the trial and the first appellate courts was identification.

On 24<sup>th</sup> June, 1999, at about 2.30 pm, Harun Ngigi (PW1), a salesman at Castle Brewery at Thika, was on his way to Kiriani, Murang'a, to market beer. He was driving a motor vehicle registration number KAK 169 T and with him were two of his workmates. A few kilometers from Kamacharia PW1 found

three people in the middle of the road. They ordered him to stop but sensing danger PW1 made a quick reverse but was unable to drive off because they were shot at. He became frightened and stopped the vehicle. The robbers bundled PW1 and his co-workers into the enclosed body of the vehicle and locked them in. The robbers then drove some distance along a murram road. At a secluded place they robbed PW1 of money and beer.

It transpired that at the time of the incident Josephat Maina Kanyari (PW2) was driving a matatu from Muranga heading to Kiriani. Just as he was about to overtake the castle vehicle, he saw PW1 inside that vehicle with his arms raised up. On a closer look he saw the appellant pointing a pistol at PW1's head. PW2 had known the appellant before the robbery. He testified:

**“I also saw the accused with the pistol pointing at the driver of castle vehicle. The accused is a man from home and we have grown up together. We went to the same school.”**

It is also significant that when the appellant was given the opportunity to cross-examine PW2, he declined to ask him any questions. In the circumstances, the evidence of PW2 as relates to the recognition of the appellant stood unchallenged and the trial court acted on it to convict the appellant. The first appellate court evaluated the evidence on identification and concurred with the trial court that the appellant was positively identified. Also, on our part we are satisfied on the evidence on record which we have evaluated, that the evidence on recognition was free from error.

Mr Kiptoo has further faulted the procedure adopted at the identification parade. He contends that the identification parade officer did not read the rules to the appellant. He also says that the report thereof did not specifically state that the persons who were on the parade were similar. However, a reading of the proceedings before the trial court shows that both Inspector Kamande (PW7) and Chief Inspector Obara (PW8) testified that the members of the parade were similar. Also, after the parade, the appellant signed the report, indicating that he was satisfied with the manner in which it had been conducted. Indeed, the appellant did not raise any questions at the trial about the procedure used in conducting the said parade. On our part, having perused the identification parade reports, we are satisfied that the parades were properly conducted and that in each instance the appellant was easily and without hesitation identified by John Wambua (PW3).

As a whole, there was credible evidence that the appellant robbed PW1 of money with violence in broad daylight and that he was recognized by PW2, his acquaintance and schoolmate. Further, the appellant was identified by PW3 in two identification parades. In the circumstances, there was evidence upon which the trial and first appellate courts could have concluded that the evidence of identification was safe and free from error.

As there was a concurrent finding that the appellant had been sufficiently identified and there being no misdirection amounting to an error of law, we are satisfied that the conviction of the appellant is safe and we uphold it.

In the result this appeal must fail and is accordingly dismissed. It is so ordered.

**Dated and delivered at Nairobi this 3<sup>rd</sup> day of November, 2006.**

**P.K. TUNOI**

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**JUDGE OF APPEAL**

**P.N. WAKI**

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**JUDGE OF APPEAL**

**W.S. DEVERELL**

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**JUDGE OF APPEAL**

I certify that this is  
a true copy of the original

**DEPUTY REGISTRAR**