



**REPUBLIC OF KENYA
COURT OF APPEAL AT MOMBASA**

Criminal Appeal 138 of 2002

ABDIRAHMAN ALI ABDI APPELLANT

AND

REPUBLIC RESPONDENT

**(Appeal from a Judgment of the High Court of Kenya at Mombasa (Justice Waki & Tuitui,
Commissioner of Assize) dated 3rd December, 2001**

in

H.C.C.R.A. NO. 60 OF 1999)

JUDGMENT OF THE COURT:

The Republic never supported the conviction of the appellant in the High Court. They still do not do so in this Court. We agree that the conviction of the appellant was clearly unsafe. Apart from anything else, we agree with Ms. Kwena that it was not shown the source of light which enabled P.W.1 to identify the appellant at 1 a.m. in the night. The Magistrate herself and the High Court do not mention in their respective judgments the source of lighting at the place of the robbery and the position of that light relative to the position of the appellant and the person or persons who were said to be with him.

Next there was the question of law concerning identification by a single witness under what were obviously difficult circumstances. The trial Magistrate wrote her judgment straight away on the bench. She sentenced the appellant to death. In her judgment there is absolutely no indication that she was aware of the requirement that a court has to warn itself of the dangers inherent in basing a conviction on identification by a single witness under difficult circumstances.

The High Court mentions that requirement only in passing. We agree that it would be wrong to maintain the conviction recorded against the appellant. We accordingly allow his appeal, quash the conviction and set aside the sentence. The appellant is to be released forthwith unless he is held for some other lawful cause.

Dated and delivered at Mombasa this 4th day of August, 2003.

R. S. C. OMOLO

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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