



**IN THE COURT OF APPEAL
AT NAIROBI**

CRIMINAL APPEAL NO. 63 OF 2000

BETWEEN

EDWARD MAUMO MAKASI APPELLANT

AND

REPUBLIC RESPONDENT

**(Appeal from a judgment of the High Court of Kenya at
Mombasa (Commissioner Mrs. Khaminwa) dated 19th
November, 1999**

in

H.C.CR.A. NO. 200 OF 1997)

JUDGMENT OF THE COURT

Edward Maumo Makasi (the appellant) was sentenced to death by the Senior Resident Magistrate, Mombasa, following his conviction for robbery with violence contrary to section 296 (2) of the Penal Code. It was alleged that on 13th March, 1996 at Moon Cinema in Mombasa, he together with another person while armed with a pistol robbed one Gulam Hussein (the complainant) of a Mitsubishi Lancer KAB 097M valued at Shs.2,000,000/- and used actual violence on the complainant.

The complainant's evidence was that as he left his home early in the morning in his car to take his children to school he was accosted by two Africans one on either side. The one on the right had a gun wrapped in a piece of cloth which he unfolded to reveal the weapon. He ordered the complainant to get out quickly. As he got out, he tried to take the keys with him but he was ordered to leave them in the car. The robbers then drove off in the car. The complainant made a report to the police.

Two weeks later the complainant was called to Bamburi Police Station and he was shown a motor car which looked like his Mitsubishi Lancer except for its registration number which was KAB 495K. The police had recovered KAB 495K following an attempted robbery at Tamarind Restaurant on 18th March, 1996.

The complainant could not identify the men who robbed him. In the course of their investigations the police traced KAB 495K at a house in Kiembeni occupied by a woman alleged to be the appellant's girlfriend. The girlfriend told the police the appellant stayed with his sister at another address. When the police searched the sister's house they claimed to have found a black briefcase behind the toilet and in the inside of which they found number plates KAB 097M, ID NO. 2093573/65 bearing the name of Edward Maumo, the appellant, and some money. The appellant's appeal to the High Court against both conviction

and sentence was dismissed. It is pretty obvious that the persons who stole the complainant's motor vehicle fixed false number plates on it to read KAB 495K. Neither the appellant's girlfriend nor his sister were called to give evidence at the appellant's trial. A witness who claimed to have seen the appellant fleetingly as he escaped from Tamarind Restaurant also said he had identified the appellant at an identification parade conducted by the police. The prosecution did not tender any such evidence nor were the parade forms exhibited in court. The prosecution did not adduce evidence to show either that the black briefcase belonged to the appellant or in what way it was connected with him. Even the identity card belonging to the appellant and alleged to have been found in the briefcase not produced in court. In the absence of this evidence, there was no other credible evidence to connect the appellant with the robbery. The evidence by the witness who claimed to have recognised the appellant as he escaped from Tamarind Restaurant was worthless.

The result of all these blunders by the prosecution is that the case against the appellant was not proved beyond any reasonable doubt. He was wrongly convicted. We allow his appeal, quash his conviction and set aside the sentence. We order that he be set at liberty forthwith unless otherwise lawfully held.

Dated and delivered at Mombasa this 19th day of January, 2001.

R. O. KWACH

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JUDGE OF APPEAL

A. B. SHAH

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JUDGE OF APPEAL

M. KEIWUA

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JUDGE OF APPEAL

I certify that this is a true copy of the original

DEPUTY REGISTRAR