

REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT KISUMU
CORAM: TUNOI, LAKHA & OWUOR, J.J.A.
CRIMINAL APPEAL NO. 3 OF 2000

BETWEEN

MAURICE ONYANGO
PETER A. WANYWAAPPELLANTS
AND
REPUBLICRESPONDENT

**(Appeal from a judgment of the High Court of Kenya at
Kisumu (Wambilyangah J) dated 18th June, 1999**

in

KSM. H.C.CR.A. NOS. 210 & 211 OF 1998)

JUDGMENT OF THE COURT

In this second appeal, we are satisfied that there are no grounds for impeaching the concurrent findings by the two lower courts that the appellants, who were well-known to the complainant and the two main prosecution witnesses, were properly identified. It was established that the attack took place at about 5 p.m. along a busy road on a polling day. The identification in our view, was free from error.

The defence of alibi advanced by the appellants was not available to them for they were at the scene of the robbery.

The account of what happened by the complainant who unhesitatingly named his assailants (the appellants) to the Police agrees in all material respects with the evidence of the other prosecution witnesses.

In the end we have come to the inevitable conclusion that this appeal has no merit and must fail. It is accordingly dismissed. However, the sentence is varied to include automatic police supervision order for a period of 5 years from the date of release from prison as is mandated by **section 344 A of the Criminal Procedure Code** .

**Dated and delivered at Kisumu this 19th day of March,
2001.**

P. K. TUNOI

JUDGE OF APPEAL

A. A. LAKHA

JUDGE OF APPEAL

E. OWUOR

JUDGE OF APPEAL

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

DEPUTY REGISTRAR