

REPUBLIC OF KENYA

IN THE COURT OF APPEAL AT MALINDI

CRIM APP 106 OF 2001

JARED MUGANGA MWACHOFI APPELLANT

AND

REPUBLIC RESPONDENT

JUDGMENT OF THE COURT

The appellant was charged before the Chief Magistrate's Court at Mombasa with the offence of robbery with violence contrary to Section 296 (2) of the Penal Code and convicted of the same. His appeal to the superior court was dismissed. He now appeals to this Court. Being a second appeal it lies only on questions of law. The only complaint to this Court made on behalf of the appellant is that the evidence of identification was not positive or correct. The adequacy of sufficiency of evidence is almost always a question of fact and we would not normally entertain a second appeal on such a question fact.

Having said that, we have carefully examined the record in the instant appeal and are satisfied that the evidence of the appellant's identification is overwhelming and beyond any doubt. It is cogent and convincing such as to render the conviction in this case quite safe. The appellant was chased in broad daylight and arrested. It cannot be said that in those circumstances his identification was mistaken. Accordingly and, for the reasons above stated, this appeal has no merit at all. Without any hesitation we dismiss the appeal

. Dated and delivered at Mombasa this 24th day of July, 2001.

A. A. LAKHA

JUDGE OF APPEAL

S. E. O. BOSIRE

JUDGE OF APPEAL

E. OWUOR

JUDGE OF APPEAL

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

DEPUTY REGISTRAR