



IN THE COURT OF APPEAL

AT MOMBASA

(CORAM: OMOLO, LAKHA & KEIWUA JJ.A)

CRIMINAL APPEAL NO.99 OF 1999

BETWEEN

KILONZO JOHANNA URYUAPPELLANT

AND

REPUBLIC RESPONDENT

JUDGMENT OF THE COURT

The appellant, KILONZO JOHANNA URYU, was charged that on 12 February 1994 at 10.00 a.m. at Kilibesi Village, Tora Location, Kwale District, jointly with another person, robbed one Ngunyinyi Jasho of his bicycle, one bundle of maize flour, one packet of flour, one dozen cooking fat, all valued at Kshs.5,434/= and used violence immediately before, during and after her robbery. On 21 June 1995 convicted by Senior Resident Magistrate in the Chief Magistrate's Court, Mombasa, and sentenced to death. His first appeal to the superior court was, on 23rd July, 1999 dismissed. He now appeals to this Court on the point of law that the identification of the appellant was not proved with certainty and/or beyond reasonable doubt at the outset that the question of identification received considerable and careful attention in this case. In the superior court which had dismissed the appeal it was said:

"The robbery was committed in broad daylight and there is only the direct evidence of the complainant who saw the Appellant. He first saw the two young men who eventually attacked him at the market where he bought his goods. The two followed him on his way home and attacked him as he made to turn into his way home. He gave a detailed account of the role played by each of the two young men in assaulting him with various cuts and beatings all over his body. They carried him and dumped him in thick bush from where he screamed for help and struggled to get out after the assailants left. He remained conscious throughout".

At almost the end of the judgment, the superior court stated as follows:

"We think with respect that the conditions favouring identification of the persons who assaulted and robbed the complainant were so conducive to positive identification that the possibility of error was at the very minimum. The complainant gave a graphic account of how he was attacked and described his attackers. That evidence was not challenged at all in cross examination and we do not fault the learned trial magistrate for believing the complainant's evidence. We also agree with the assessment of the evidence made that the Appellant led P.W.3 and others to the recovery of some of the stolen items. That lends corroboration to the identification of the Appellant by the complainant, and in our view, removes any doubt if there was one in the complainant's evidence, which we do

not find, that the Appellant was one of the two persons who robbed him.

We dismiss the Appeal."

We ourselves have carefully considered both the above passages and agree fully with them. We are satisfied that the conviction of the appellant was safe and is based on evidence which is credible and proves the charge beyond any doubt whatsoever. We have reached the conclusion that this appeal has no merit. Accordingly, it is dismissed.

Dated and delivered at Mombasa this 26th day of January, 2000.

R.S.C. OMOLO

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JUDGE OF APPEAL

A.A.LAKHA

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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