

REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT MOMBASA

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

CRIMINAL APPEAL NO. 101 OF 1999

BETWEEN

SAID ABEID SAIDAPPELLANT

AND

REPUBLICRESPONDENT

**(Appeal from the Judgment of the High Court of Kenya at
Mombasa (Hayanga & Waki, JJ.) dated 23rd July, 1999**

in

H.C.CR.A. NO. 300 OF 1997)

JUDGMENT OF THE COURT

The appellant was charged with the offence of robbery with violence contrary to section 296(2) of the Penal Code. The particulars of the offence, the accused was charged with were that the accused jointly with others not before the court, being armed with dangerous weapons, namely, knives, robbed one Daniel Okello Omar of Kshs.2,000/= and a wrist watch and at or immediately before or immediately after the time of the robbery used actual violence against the said Daniel Okello Omar. The appellant gave evidence before the magistrate's court respecting the fact that the number of his attackers were four. Both the trial magistrate and the High Court Judges who heard his first appeal all accepted that evidence.

But before us, the appellant sought to cast doubt on those findings. This being a second appeal, this court has no jurisdiction and will not concern itself with matters of facts which in any event, have been properly accepted by the trial magistrate and the superior court. The other ground of appeal is that the trial court had improperly admitted the P.3 Form signed by the doctor who treated and examined the injuries inflicted on the complainant by the accused. The P3 Form was admitted in evidence pursuant to the provisions of section 77 of the Evidence Act which permits the production in evidence of any document purporting to be a report under the hand of a medical practitioner, and such like persons. Although that section allows the production of the P3 Form, it was submitted by Mr. Ngombo that the appellant ought to have been made aware or informed of his right to have the doctor called for cross-examination.

This irregularity was conceded by Mr. Gumo for the respondent, who was quick to add that the charge of robbery with violence did not depend for its sustainability on the production of the P3 Form. He submitted and we agree, in view of the ingredients of the robbery under section 296(2) of the Penal Code, that there was other ample evidence to sustain that charge of robbery. The appellant was armed with a knife which he used to attack the complainant at the time of the robbery and he was also in company of other persons as was found by the trial court and confirmed by the superior court on the first appeal. There is no basis upon which we can on a second appeal, interfere with these findings of facts.

We accordingly dismiss the appeal because the appellant's conviction by the magistrate was supported by other evidence.

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

R. S. C. OMOLO

JUDGE OF APPEAL

A. A. LAKHA

JUDGE OF APPEAL

M. KEIWUA

JUDGE OF APPEAL

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

DEPUTY REGISTRAR.