



REPUBLIC OF KENYA

IN THE COURT OF APPEAL OF KENYA

AT NYERI

Criminal Appeal 85 of 1994

TOM MUCHIRI.....APPELLANT

AND

REPUBLIC.....RESPONDENT

(Appeal from a Judgment of the High Court of Kenya at Nyeri (Lady Justice M.A. Ang'awa) dated 7th December, 1993

IN

HC.CR. APPEAL NO. 341 OF 1993)

JUDGMENT OF THE COURT

This is a second appeal, the appellant's first appeal to the High Court having been summarily dismissed under section 352(2) of the Criminal Procedure Code. The appellant's ground of appeal to the High Court were that the complainant did not identify him, that the trial magistrate had failed to consider the evidence of P.W.2 that that witness did not mention his name during the trial, that the magistrate also failed to consider the fact that the prosecution did not investigate the case properly, that no eye-witness saw him at the scene and finally that the trial magistrate failed to consider his defence. These were really not issues of law. The evidence of the complainant which the trial magistrate accepted was that the complainant first saw the appellant and some other persons at a bar called Star Point and that when he was later attacked by a group of six persons the appellant was among them. Police constables Peter Gaturuku (P.W.3) and Charles Ndwiga (P.W.4) were that night on patrol duties within Nyeri town. The latter was in charge of Police – dog. P.W.3 knew this appellant and it was his evidence that he saw the appellant and another person running away from the scene where the complainant had been attacked, that he chased then, called the appellant by his name, and the appellant and his colleague then stopped. He arrested them. This evidence was accepted by the trial magistrate and in our view, he was entitled to do so. Having accepted the prosecution evidence, there could have been no other conclusion open to the magistrate, except that the appellant was guilty of the offence charges against him. His grounds of appeal to the High Court raised no points of law and read fairly they amounted to no more than that the conviction was against the weight of evidence and that the sentence was excessive. We think the Judge was entitled to reject the appeal summarily and we reject Mr.

Gikonyo's contention that the appeal fell outside the provisions of section 352(2) Criminal Procedure Code. The appellant was correctly convicted and we dismiss his appeal and that shall be the order of the Court.

Dated and delivered at Nyeri this 24th day of October, 1994.

R. O. KWACH

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JUDGE OF APPEAL

A.M. COCKAR

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JUDGE OF APPEAL

R. S. C. OMOLO

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR.



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