REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI

crim app 658 of 81

YUSUF HARED ALI …….. APPELLANT

VERSUS

REPUBLIC …….. RESPONDENT

CORAM: TODD J

Appellant absent, not wishing to be present and unrepresented,

M B Mbai (State Counsel) for respondent

JUDGMENT

The appellant Yusuf Hared Ali was charged on four counts of robbery said to have been committed on the same night at Rhamu Manyatta in Rhamu division of the Mandera District. He was acquitted of the charges in counts 1 and 2 for though the two complainants said they were able to identify the appellant at night there was no corroborative evidence to support their identification as the trial magistrate so found, applying what was said in the case of Abdallah Bin Wendo & another v Republic [1953] 20 EACA 166.

"although subjects to certain exceptions a fact may be proved by the testimony of a single witness, this does not lessen the need for testing with the greatest care the evidence of witness respecting the identification, especially when it is known that the conditions favouring a correct identification are difficult. In such circumstances other evidence, circumstantial or direct, pointing to guilty is needed."

The trial magistrate, however, convicted the appellant on counts 3 and 4 finding that Ebla Mohamed (PW 2), positively identified the packet or cloth bag which she had tied a knot inside to hold sugar, the packet contained some sugar which the trial magistrate believed was part of the sugar which Ebla Mohamed had bought and the 3 packets of the tea leaves and I think most important she positively identified the knife found with the appellant when he was arrested and the same knife was identified by Diriye Abdullahi Hassan (PW 1) who said that the knife had belonged to her late brother and she herself had made the sheath.

And as regards count 4 the trial magistrate found that Hajira Dahir (PW 3) had successfully identified the piece of cloth which she claimed that she had bought on the same day of the robbery.

Accordingly I dismiss the appellants appeal against conviction on these 2 counts.

As regards sentence the appellant was sentenced to five years on each count of the two counts to run concurrently. I find these sentences quite reasonable in view of the fact that the appellant was in company with another and was armed with a rifle. Of course the appellant should have also been awarded corporal punishment as provided for in Section 296(1) of the Penal Code (Cap 63), and so in accordance with the provision to Section 364(2) enacted by Act No 11/1970 I now award one stroke of corporal punishment to each one of the two convictions for robbery entered against the appellant and I also order that he will be subject to police supervision for five years on his release from prison vide Section 344 A(1) of the Criminal Procedure Code (Cap 75) enacted by Act No 3 of 1969.

26th January, 1983

J H S TODD

JUDGE