



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL APPEAL 419 OF 2000

ISAAC KIENNE MUKWATE.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

On 6th March, 2003, we allowed the appellant's appeal against the conviction for the offence of Robbery with violence and set aside the death sentence. We reserved our reasons for agreeing with the learned counsel for the Republic for conceding the appeal.

The offence was committed at night. The complainant raised an alarm and neighbours came. Footprints led to the house of the appellant where some rubber shoes were found and believed to have made the foot prints. The ground was wet but there was no mind on the shoes to confirm they had been used to walk over mind. Nevertheless the learned trial magistrate convicted the appellant.

With respect, we agreed with the learned counsel for the republic that that evidence was most unsafe upon which to base a conviction that carries a death sentence.

For those reasons the appeal was allowed.

Dated and delivered at Nairobi this 13th day of May, 2003.

A. MBOGHOLI MSAGHA

JUDGE

R.M MUTITU

JUDGE



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