**Chege v Republic**

**Division:** Court of Appeal of Kenya at Nakuru

**Date of judgment:** 3 March 2006

**Case Number:** 143/05

**Before:** Tunoi, O’kubasu and Deverell JJA

**Sourced by:** LawAfrica

**Summarised by:** H Kibet

*[1] Evidence – Identification – Identification by recognition – Quality of light available to identifying*

*witness – Corroboration – Whether appellant was adequately identified – Whether corroboration of*

*eye-witness testimony required.*

**Editor’s Summary**

At about 1am on 11 November 2000, a gang of armed men entered a bar in Molo where several patrons were drinking. They ordered the patrons to lie down and proceeded to rob them of their valuables. One of the patrons, the second complainant in this case, was not touched at first due to his being disabled.

However, one of the gang later pulled him down from his seat by the bar and robbed him of his watch.

The robbery was later reported to the police. On 17 March 2001, the police received a report that one of the robbers they were looking for had been seen in a house within Molo town. The officer who received the report and other officers with dogs went to the house. They knocked on the door and as they waited for it to be opened, the appellant jumped out of a window but was chased and caught by the police dogs.

The appellant was later charged on two counts of robbery with violence contrary to section 296(2) of the Penal Code. The key evidence against him was that of the second complainant who testified on three different occasions and was cross-examined by the appellant. In his testimony, he stated, *inter alia*, that he had recognised the appellant and some of the other robbers. The officer who arrested the appellant also testified at the trial to the effect that the appellant had been wanted in connection with other crimes. The trial magistrate believed the evidence of the prosecution and in particular the second complainant who he found to be firm and truthful in his testimony. He convicted the appellant and sentenced him accordingly.

On appeal to the High Court, the judges re-evaluated the evidence before the trial court, warned themselves of the dangers of convicting on the evidence of a single identifying witness but found that the appellant was properly convicted. The appellant now appealed to the Court of Appeal on the grounds that the High Court erred in finding that the quality of light in the bar was adequate. Counsel for the appellant further argued that the prosecution had failed to adduce evidence as to the quality of the light and the distance between the identifying witness and persons identified, as required by law.

**Held** – It was usually necessary for the prosecution to adduce evidence as to quality of light and distance between the identifying witness and the person identified; *Maitanyi v Republic* and *Wanjohi and others v*

*Republic* followed. In this case, there had been no such evidence notwithstanding that the second complainant had established his credibility to the satisfaction of the trial magistrate.

The appellant’s act of running away which had been taken by the courts below as corroborating the evidence of the witness was not very convincing corroboration. This was especially so in light of the fact that the police were looking for him in connection with other crimes.

Accordingly, the case against the appellant had not been proved beyond reasonable doubt. Appeal allowed, conviction quashed and sentence set aside.

**Cases referred to in judgment**

(“**A**” means adopted; “**AL**” means allowed; “**AP**” means applied; “**APP**” means approved; “**C**” means

considered; “**D**” means distinguished; “**DA**” means disapproved; “**DT**” means doubted; “**E**” means

explained; “**F**” means followed; “**O**” means overruled)

***East Africa***

*Maitanyi v Republic* [1986] KLR 198 – **F**

*Wanjohi and others v Republic* [1989] KLR 415 – **F**