**Soki v Republic**

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

**Date of Judgment:** 26 March 2004

**Case Number:** 26/04

**Before:** Omolo, Githinji JJA and Onyango Otieno AJA

**Sourced by:** LawAfrica

**Summarised by:** C Kanjama

*[1] Crime – Robbery with violence – Whether there was proper identification of the accused.*

*[2] Criminal Procedure – Alibi defence – Defence of alibi rejected on basis of collateral challenge to different evidence – Alibi defence not considered on its merits in the first appeal – Whether there was an error of law entitling the accused to an acquittal.*

**Editor’s Summary**

The prosecution witnesses testified to a robbery with violence within the precincts of the complainant’s house. The complainant and fellow witness claimed to have identified the accused by recognition from a lamp in the house, as the accused was a relative. The accused raised an alibi defence. The trial Magistrate considered the accused’s alibi and rejected it because the accused had lied about how he came to report to the office of the police officer. The Magistrate concluded that the deceit of the accused was an indication of guilt and hence the alibi was only an afterthought. On first appeal, the High Court Judge failed to consider afresh the defence of the accused.

**Held** – The first appellate court has a duty to carefully analyse and weigh any conflicting evidence and draw its own conclusion on the same, bearing in mind that it had not seen or heard the witnesses. The superior court had failed to re-consider the matter afresh in order to draw its own conclusion, merely agreeing with the trial Magistrate that the alibi defence was an afterthought and of no probative value. *Njoroge v Republic* [1982-88] 1 KAR 134 followed. If the Court had considered all the evidence in the case, it is possible that a different decision would have been arrived at. The appeal would therefore be allowed.

**Case 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)

*Njoroge v Republic* [1982-88] 1 KAR 134 – **F**