



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT EMBU**  
**CRIMINAL APPEAL NO. 57 OF 2013**

**JOHN KINYUA NJERU.....APPELLANT**

**VERSUS**

**REPUBLIC.....PROSECUTION**

*(Being an Appeal from the Conviction and Sentence by M. O. OBIERO Ag. Principal*

*Magistrate Runyenjes in Criminal Case No. 291 of 2013 on 24th September, 2013)*

**J U D G M E N T**

1. **JOHN KINYUA NJERU** the appellant herein was charged with the offence of **Robbery with violence contrary to Section 296(2) of the Penal Code**. He was convicted and sentenced to death.

2. From the record we have noted that the Prosecution called a total of ten (10) witnesses in this case. The last witness testified on 29/8/2013 and the appellant was placed on his defence on the same day.

3. The provisions of Section 211 of the Criminal Procedure Code were complied with and he indicated that he would give sworn evidence with no witness to call. Defence hearing was set for 12/9/2013.

4. On 12/9/2013 the defence hearing could not proceed as the appellant appeared not ready. The matter was adjourned to 17/9/2013. On 17/9/2013 the appellant indicated he was not ready to proceed and applied to be supplied with proceedings.

5. The Court ordered that he be supplied with Court proceedings but had to nonetheless proceed with his defence. The appellant then made it clear to the Court that he would not proceed with his defence and the Court would make its decision on the evidence on record. The Court further went to interpret this to mean the appellant had elected to remain silent as an option under Section 211 of the Criminal Procedure Code.

6. The learned trial Magistrate then closed the defence case and wrote and delivered a judgment the subject of this appeal.

7. Article 50(2) of the Constitution provides

***“Every accused person has the right to a fair trial, which includes the right -***

***c) to have adequate time and facilities to prepare a defence.***

8. On 16/9/2013 when the appellant requested to be supplied with proceedings it must have been for the purpose of preparing his defence. It was important for him to know what each witness had stated in Court. And he could only know this by reading the proceedings.

9. For the Court to allow him to have proceedings supplied to him (which could not have been done on the same day) and insist he makes his defence on the same day was to our minds very unreasonable.

10. An accused person has a right to adequately prepare for his defence. And in this case this was a defence on a serious charge carrying a death sentence. He required sufficient time to go through the evidence and prepare. The Court failed to grant him this opportunity.

11. We have also considered that there had been no inordinate delay in the hearing of the matter to warrant such drastic action.

12. We do find that what happened to the appellant on 16/9/2013 was a violation of Article 50(2)(a) of the Constitution and this amounted to a mistrial.

13. We therefore set aside the conviction and the sentence of 24/9/2013. The matter will be heard afresh. The appellant will be remanded in custody until 5/5/2014 when he will appear before the Chief Magistrate's Court Embu for plea.

Orders accordingly.

**DATED AND SIGNED AT EMBU THIS 30TH DAY OF APRIL, 2014.**

**H.I. ONG'UDI**

**D.S. MAJANJA**

**J U D G E**

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**DELIVERED ON 30TH APRIL, 2014 BY;**

**D.S. MANJANJA**

**JUDGE**