



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT MERU**

**Criminal Appeal 52 of 2008**

**JULIUS KIRIMI ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

*(An appeal against the judgment of J. Nyaga P.M. in*

*Criminal Case No. 2286 of 2007 delivered on 17<sup>th</sup> April 2008)*

**JUDGMENT**

The appellant was charged with the offence of robbery with violence contrary to section 296(2) of the Penal Code. The particulars of the offence were as follows:-

***“1. Stephen Gitonga 2. Fredrick Mwiti Muriuki 3. Julius Kirimi 4. Moses Kinyua Jadiel: on the 16day day of June, 2007 at Maua township in Igembe District within the Eastern Province, jointly with others not before the court and while armed with a knife and sticks robbed SHADRACK M’MITHIYA M’KIRIMA a mobile phone NOKIA 3310 valued Kshs. 4,000 and cash Kshs. 10,000 and at or immediately before or immediately after the time of such robbery wounded the said SHADRACK M’MITHIYA M’KIRIMA.”***

As can be seen from those particulars of offence, the weapons used by the accused persons were not described to be dangerous or offensive as required under section 296 (2). The charge which the appellant faced at the lower court therefore was defective because the particulars of the offence did not state that the weapons used by the appellant were dangerous. That is a requirement under section 296 (2) of the Penal Code. That section is in the following terms:-

***“296. (2) If the offender is armed with any dangerous or offensive weapon or instrument, or is in company with one or more other person or persons, of if, at or immediately before or immediately after the time of the robbery, he wounds, beats, strikes or uses any other personal violence to any person, he shall be sentenced to death.”***

As can be seen from that sub-section Section 296(2) it is essential that the particulars of the charge do indicate that a person was armed with dangerous or offensive weapon. Failure to state so renders that charge defective and the consequence of that finding is that the appellant’s appeal would succeed. That was holding by the Court of Appeal in the case of **Juma Vrs. Republic** [2003] 2 E.A. The court held as follows:-

***“The charge referred to the appellant having been armed with knives but the particulars did not clearly state whether the knife was a dangerous weapon. Under section 296(2) of the penal Code the charge must state that the accused was armed with a dangerous or offensive weapon or instrument. The charge as laid was defective as it did not clearly specify the essential ingredients of the offence under section 296(2) of the Penal Code.”***

Having found that the charge which the appellant faced in the lower court was defective, the appellant’s appeal must succeed. Accordingly, the lower court’s conviction is hereby quashed and the sentence is hereby set aside and we order the appellant to be set free unless he is otherwise lawfully held.

Dated and delivered at Meru this 16<sup>th</sup> day of November 2009.

**MARY KASANGO**

**JUDGE**

**M.J.A. EMUKULE**

**JUDGE**