



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

**Criminal Appeal Case 58 of 2008**

**EJIDIO MURAGE .....APPELLANT**

**VERSUS**

**REPUBLIC..... RESPONDENT**

**JUDGMENT**

The appellant Ejidio Murage with 3 others was charged with the offence of robbery with violence contrary to **Section 296 (2) Penal Code**.

After trial the other 3 accused persons were acquitted but the appellant was convicted and sentenced to death because he was mentioned adversely as the person who had paid for a panga that had got lost. The charge sheet stated that the appellant with others were arrested with dangerous weapons, pangas.

The State Counsel addressed the court and submitted that the State was conceding the appellant on grounds that the language the Court conducted proceedings was not indicated. This is indicated in proceedings on 22.02.07. Also, proceeding taken on 20.03.07 and on other dates. Whereas it is clear the court language is English language, Kiswahili, there is no indication that the appellant understood once languages and no interpretation was provided. We therefore find that the proceedings were conducted contrary to the provision of constitution and the **Criminal procedure Code**. This was prejudicial to the appellant.

The other issue is that the connection between appellant and the offence is that he had paid for a panga which had got lost. The evidence of its recovery is that after a few days an informer came and gave the complainant a panga "***The informer told me that it was the first accused (appellant) who paid***" for the panga. Truly all the evidence about the panga cannot support the conclusion of this case. It was based on hearsay.

We have examined the judgment of the Trial Magistrate and all the record. It is our finding that there is no evidence adduced before the Court that can support the charge.

We therefore allow the appeal quash conviction and set aside sentence of death imposed.

We order that the appellant be set at liberty forthwith unless otherwise lawfully held.

**DATED** this 31<sup>st</sup> of July 2008

**J. N. KHAMINWA**

**J. MAKHANDIA**

**JUDGE**

**JUDGE**