



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**  
**Criminal Appeal 148 of 2005**

**JOSEPH KINGORI KABUI.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

**JOSEPH KINGORI KABUI** (the Appellant) was upon trial before the Senior Resident Magistrate at Narok on a charge of robbery with violence contrary to **Section 296(2)** of the **Penal Code** convicted and sentenced to death. He has appealed against both the conviction and sentence.

At the hearing on 7<sup>th</sup> July 2008, Mr. Mugambi, learned state counsel conceded the appeal on the ground that the appellant was, without any explanation by the police, kept in police custody for a period of 6 months before being taken to court and that the Appellant's identification was also in doubt.

As Mr. Mugambi has rightly conceded no explanation has been given by the police for the gross violation of the Appellant's constitutional right to a fair trial within a reasonable time. Whether or not there was evidence against the Appellant, on the authority of the Court of Appeal decision in **Paul Mwangi Murunga Vs Republic, Criminal Appeal No. 35 of 2006**, we have no choice but to allow this appeal. We therefore quash the Appellant's conviction and set aside the sentence and order that he be set free forthwith unless otherwise lawfully held.

DATED and delivered at Nakuru this 18<sup>th</sup> day of July, 2008.

**D. K. MARAGA**

**JUDGE**

**M. MUGO**

**JUDGE**