



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**  
**AT NYERI**

**Criminal Appeal 30 of 2006 & 44 of 2006 (Consolidated)**

**PETER GITONGA GERALD..... APPELLANT**

**VERSUS**

**REPUBLIC..... RESPONDENT**

*(Being an appeal from the conviction and sentence of*

*R.N. Muriuki Senior Resident Magistrate in Senior Resident Magistrate's*

*Criminal Case No. 1825 of 2005 at Nanyuki)*

**CONSOLIDATED WITH**

**REPUBLIC OF KENYA**

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**CRIMINAL APPEAL NO. 44 OF 2006**

**PETER GITHINJI MWANGI..... APPELLANT**

**VERSUS**

**REPUBLIC..... RESPONDENT**

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*R.N. Muriuki Senior Resident Magistrate in Senior Resident Magistrate's*

*Criminal Case No. 1825 of 2005 at Nanyuki)*

**JUDGMENT**

Both the above appellants were charged in the lower court with robbery with violence contrary to section 296(2) of the penal code. They were both convicted as charged and the first appellant was sentenced to death whilst the second appellant who was below 18 years was detained at the president's pleasure. They have now filed these appeals and when the same came for hearing an order for consolidation was made. This is the first appeal. In deciding this appeal we are guided by the principles enunciated by the Court of Appeal Case of *Gabriel Njoroge vs Republic (1982 – 88) 1 KAR 1134 at page 1136* where it was stated:

***“As this court has constantly explained, it is the duty of the first appellate court to remember that the parties to the court are entitled, as well on the question of fact as on the question of law, to demand a decision of the court of the first appeal and as the court cannot excuse itself from the task of weighing conflicting evidence and drawing its own inferences and conclusions though it should always bear in mind that it has neither seen nor heard from the witnesses and make due allowance in this respect (see Pandya v R (1957) EA 336, Ruwala vs R (1957) EA 570).”***

PW 1 sold potatoes for a living. On 15<sup>th</sup> august 2005 whilst walking at Majengo in Nanyuki at 2p.m. he found standing on the road four men. One of them stopped him and asked him whether he was selling the potatoes. They then agreed that he would buy two debes of potatoes at the price Kshs.130/- per debe. As he began to check on the potatoes other men approached him from his back. One of them placed an knife on his neck. The one who had agreed to buy the potatoes began to put his hands in his pockets. Two other men joined him. They stole from him Kshs.2000/-, his jacket and an identity card. In the process they tore his T-shirt. The torn T-shirt was exhibited in court. The two men who had stolen the money from him ran away and he was left with the one who had an knife on his neck. He seemed to want to cut him. Later he ran away. PW 1 reported the matter to the police at Nanyuki. He was given two police men and returned with them to Majengo area. He pointed to them the scene of the robbery. Outside of the houses he saw the man that had agreed to buy the potatoes. He pointed him out to the police. The other man also emerged and he too was pointed out to the police. This was the man who had a knife on his neck. He stated that he was able to identify the robbers because the incident occurred during the day time. He was able to describe exactly what each appellant was wearing at the time of the robbery. He said that when arrested they were found to be dressed in the same manner. PW 2 was one of the policemen who received the report of the robbery and who accompanied PW 1 to the scene. He said that PW 1 was able to identify the two appellants. The second appellant was arrested first on being identified by PW 1. On being arrested and a search being carried on their person the first appellant was found to be having a pen knife. PW 3 was in the company of PW 1 and 2. He too was a police man. He corroborated the evidence of PW 2. The appellants were found to have a case to answer by the trial court. The first appellant in his defence stated that he used to work for PW 1 in carrying potatoes for him. That he used to get paid Kshs.150/- per day. On 15<sup>th</sup> august 2005 he went to PW 1 to demand his pay for 6 days. PW 1 said that he had no money and a quarrel ensued. It was thereafter that PW 1 brought police to arrest him. He denied that he had in his possession a knife. Similarly the second appellant said that he too worked for PW 1. He was owed Kshs.900/- as his salary. On 15<sup>th</sup> august 2005 he went to PW 1 to demand his pay. PW 1 failed to pay him and they quarreled. It was then that he sent police to arrest him. Learned trial magistrate found that the prosecution had proved a case beyond reasonable doubt. We have on our part had an opportunity to reconsider that evidence. We have also considered the appellants’ written submissions. We find that PW 1’s evidence was consistent and sufficient to support a conviction of the charge. It is pertinent to note that the appellants did not cross examine PW 1 on the issue alleged in their defence that they were his employees and that he owed them some dues. That defence indeed was an afterthought. The learned trial magistrate was correct in our view in rejecting that defence. On our part we find that there is no merit in the appeals filed by the appellants. Accordingly the same are hereby dismissed.

***Dated and delivered at Nyeri this 21<sup>st</sup> day of October 2008.***

**MARY KASANGO**

**JUDGE**