



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

**Criminal Appeal 82 of 2004**

**WILSON MWANGI WAITHAKA.....APPELLANT**

*Versus*

**REPUBLIC.....RESPONDENT**

*(Being Appeal against the sentence and conviction by P. M. Mwaura, Principal Magistrate, in the Senior Principal Magistrate's Criminal Case No. 17 of 2004 at Murang'a)*

**JUDGMENT**

Having carefully considered the evidence adduced during the trial of the Appellant and bearing in mind what has been brought to my attention during the hearing of this appeal, I get the impression that the Appellant was a truthful person, admitting that he had a knife and explaining why he had it at that time at night on his way home from a visit to see his sick aunt. He said that the knife was for his security at night.

Of the two Prosecution witnesses, P.W.2 P.C. Geoffrey Waweru does not seem to know how the Appellant was arrested. He told the court during cross-examination:

***“It is not me who caught you.....It is not me who interrogated you, and I do not know what you said about you were from.”***

From what P.W.1 P.C. Joseph John Mose said during cross-examination, they seem to have had no problem getting at and apprehending the Appellant. This seems to suggest that even if there were other people who ran away from that scene, the Appellant was not with them – people chewing sugar cane from a farm.

Moreover, evidence of circumstances revealing intent to commit the felony of robbery is difficult to see.

In the circumstances, I think the conviction was unsafe. I do therefore allow this appeal. Quash the conviction of the Appellant and set aside the sentence imposed upon him. He be released forthwith unless lawfully detained in some other cause.

***Dated this 19<sup>th</sup> day of February 2007.***

**J. M. KHAMONI**

**JUDGE**