



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI

Criminal Appeal No. 269 & 270 of 2003

DUNCAN GICHOHI

GATUGI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

CRIMINAL APPEAL NO. 270 OF 2003

PAUL WANJAU WAHOME.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being appeals from the Judgement of C. D. Nyamweya,

Senior Resident Magistrate, dated 13th May, 2003. In the

Chief Magistrate's Court Nyeri, Criminal Case No.2276 of 2002)

JUDGEMENT

Duncan Gichohi Gatugi, hereinafter referred to as the First Appellant and Paul Wanjau Wahome, hereinafter referred to as the Second Appellant were jointly charged with robbery with violence contrary to section 296 (2) of the Penal Code and were each convicted and sentenced to death.

They appealed and during the hearing of their appeals, we consolidated their appeals. However, before the Appellants addressed the court, the learned Principal State Counsel, Mr. Orinda, rightly pointed out that the trial of the Appellants was a nullity because the prosecution, Corporal Mwangi, was not qualified in terms of Section 85 (2) of the Criminal Procedure Code, to prosecute.

Mr. Orinda therefore conceded the two appeals adding that there was a further defect in that the record made by the trial magistrate during the hearing does not show that witnesses were being sworn. He also pointed out that the evidence relied upon by the learned trial magistrate to convict Appellants was not sufficient to sustain that conviction.

We have looked at the relevant record and we entirely do agree with what Mr. Orinda said. In the circumstances we do hereby declare the trial of the appellants a nullity, allow each appeal; quash the

conviction of each appellant and set aside the sentence imposed on each Appellant. We do order that each appellant be set at liberty forthwith unless lawfully detained in some of other cause.

Dated this 31st day of March, 2006.

J. M. KHAMONI

JUDGE

H. M. OKWENGU

JUDGE

Present:

Both Appellants in persons.

Mr. Orinda in person

Martin Mwangi – Court clerk