

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI

Criminal Appeal 272 of 2003

STEPHEN MWANGI WARUNDU.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal from the judgment of M. R. Gitonga, then

Senior Resident Magistrate, dated 22nd May, 2003 in the

Chief Magistrate's Court, Nyeri Criminal Case No.1 of 2003)

JUDGMENT

The Appellant was convicted of robbery with violence contrary to Section 296 (2) of the Penal Code and was sentenced to death. When his appeal came before us for hearing, the Learned State Counsel m/s Ngalyuka told us she was conceding the appeal because the trial of the Appellant was a nullity as the prosecutor Senior Sergeant Kigera was not a qualified prosecutor in terms of Section 85 (2) of the Criminal Procedure Code. The State Counsel did not ask for a retrial.

We have looked at the record from the Trial Magistrate's Court and we have no reason to disagree with what the State Counsel has said.

Accordingly, we do declare the trial of the Appellant a nullity, allow his appeal, quash his conviction and set aside the sentence imposed upon him.

The Appellant shall be set at liberty forthwith unless lawfully detained in some other cause.

Dated this 3rd day of May 2006.

J. M. KHAMONI

JUDGE

H. M. OKWENGU

JUDGE