



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

**AT MACHAKOS**

**Criminal Appeal 244 of 2003**

**(From Original Conviction and Sentence in Criminal Case No. 578 of 2002 of the Senior Resident Magistrate's Court Kangundo)**

**JOSEPH NZIOKI MAINGI.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**27/6/06**

**Coram**

**D.A. Onyancha, J**

**Appellant – in person**

**Principal State Counsel for Republic - Omirera**

**CC-Mueni**

**JUDGEMENT**

The appellant was convicted of robbery contrary to section 296 (1) of the Penal Code. He was sentenced to 10 years imprisonment with 10 strokes of the cane. He appealed against both the conviction and sentence.

Mr. Omirera for the Attorney- General does support the conviction on the ground that the proceedings and particularly the plea was conducted by a Police Constable who had no power or authority to take the plea. Although the rest of the trail was conducted properly by a qualified prosecutor, it is argued that the

plea tainted the rest of the trial.

I have carefully considered the issue. I tend to agree with Omirera's submission. The taking of the plea tainted the later properly conducted trial. The conviction cannot therefore be left to stand. Accordingly, the conviction is hereby quashed. The sentence of 10 years and 10 strokes of the cane is also necessarily set aside. The appellant is hereby ordered released from prison forthwith unless he is therein lawfully held. It is so ordered.

The issue of a retrial came up. But as Mr. Omirera rightly pointed out the accused had been serving the 10 year sentence and completed four and half years. It would be against the interest of justice to order such retrial.

D.A. ONYANCHA

JUDGE

27.6.06