

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NYERI

Criminal Appeal 98 of 2004

(Appeal arising from the original conviction in Criminal Case Number 1760 of 2001 of the Principal Magistrate's Court at Muranga by G. K. Mwaura –S.R.M.)

ELIUD KAMAU NJOROGE.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

Eliud Kamau Njoroge hereinafter referred to as the appellant was tried jointly with Stephen Njuguna Gitau alias Desh and John Maina Mwangi alias Brown before the Senior Resident Magistrate Muranga, on two charges of Robbery with violence contrary to section 296 (2) of the penal code.

The appellant's co-accused were acquitted of the charges whilst the appellant was convicted of simple robbery under Section 296 (1) of the penal code and sentenced to serve 14 years imprisonment. The appellant has now appealed against his conviction and sentence.

Learned Principal State Counsel Mr. Orinda indicated that he does not support the conviction as the appellant's trial was a nullity the prosecution having been conducted by an incompetent person.

We have perused the record of appeal and have confirmed that the prosecution of the appellant was partly conducted by P.C. Machuki a person who is not competent to prosecute under section 85 (2) of the Criminal Procedure Code.

We therefore concur with the learned Principal State Counsel allow this appeal, quash the conviction and set aside the sentence imposed.

The appellant shall be set free unless otherwise lawfully held.

Dated, signed and delivered this 28th September 2006.

J. M. KHAMONI

JUDGE

H. M. OKWENGU

JUDGE