

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI

Criminal Appeal 43 of 2004

(Appeal arising from the original conviction in Criminal Case Number 964 of 2003 of the Chief Magistrate's Court at Nyeri by M. R. Gitonga – P.M.)

JAMES MAINA WANJIRA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

James Maina Wanjira hereinafter referred to as the appellant was tried and convicted by the Principal Magistrate Nyeri on two counts of the offence of Robbery with violence. He was sentenced to the mandatory death sentence and has now appealed against conviction and sentence.

Learned Principal State Counsel Mr. Orinda has conceded the appeal as the prosecution in the Lower Court was partly conducted by Senior Sgt. Kigera a person who was not competent to prosecute under **section 85 (2)** of the Criminal Procedure Code. We concur with learned State Counsel and do allow this appeal, quash the convictions 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