

IN THE HIGH COURT OF KENYA AT MACHAKOS
Criminal Appeal 38 of 2003

(From Original conviction (s) and Sentence (s) in Criminal Case No. 513 of 2002 of the Principal Magistrate's Court at Kitui M.N. Gicheru on 6/11/02)

MULI KATHUMA ALIAS WAKAITHO APPELLANT
VERSUS
REPUBLIC RESPONDENT

J U D G E M E N T

Appellant was charged with Robbery with Violence Contrary to Section 296 (2) of the Penal Code. He was convicted of simple robbery Contrary to Section 296 (1) of the Penal Code. The prosecution was partly conducted by a police constable in relation to the evidence of PW1. This, as pointed out by the state, tainted the whole trial. The court therefore agrees with state counsel that the trial was a nullity. The state does not seek a retrial since the appellant has served 3 years of the 4 years of the sentence. The result then will be that the conviction is hereby quashed and the sentence of 4 years set aside. The appellant shall be released from prison forthwith unless otherwise being therein detained lawfully. It is so ordered

Dated and delivered at Machakos this 7th day of November 2005.

D.A. ONYANCHA
JUDGE