



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI

Criminal Appeal 261 of 2003

JOHN GITAH MWANGI.....APPELLANT

Versus

REPUBLIC.....RESPONDENT

Criminal Appeal 262 of 2003

JOHN MWANGI KARUNJI.....APPELLANT

Versus

REPUBLIC.....RESPONDENT

Being appeals from the judgment of Abdul El

***Kindly, Principal Magistrate, undated, in the
Senior resident Magistrate's Court, Kangema,
Criminal Case No. 707 of 1999)***

JUDGMENT

The above two appeals were consolidated for hearing, the Appellant in Criminal Appeal No. 261 of 2003 being referred to as the First Appellant, while the Appellant in Criminal Appeal No. 262 of 2003 is referred to as the Second Appellant. They were the First and Third Accused, respectively, in the trial court which had three accused persons charged with robbery with violence contrary to Section 296(2) of the Penal Code.

Particulars of the offence alleged that on the night of 29th/30th October 1999 at Gataragwa Village in Muranga District, Central Province the three accused persons jointly with others not before court, being armed with pangas, robbed Margaret Nyambura Kibe, 65 iron sheets, one mattress and three blankets all to the total value of Ksh.19,900/= using actual violence in which they wounded the said Margaret Nyambura Kibe.

At the end of the trial in which four prosecution witnesses gave evidence, the two appellants were convicted and sentenced to death. They appealed and when hearing of the two appeals started before us, the learned Provincial State Counsel, Mr. Orinda, told us that he was conceding to both appeals for two reasons.

Firstly, the investigation of the case was not done properly. Secondly, on 15th February 2001 the prosecutor, P.C. Nyumu, was not a qualified prosecutor in accordance with the law. The learned State Counsel said he was not asking for a re-trial.

We have looked at the recorded evidence before the learned trial magistrate. We find that apart from the fact that the prosecutor, on 15th February 2001, was not a qualified prosecutor in terms of Section 85(2) of the Criminal Procedure Code, the investigation was also poor and the prosecution very poor. Clearly this is a case where there should not be a re-trial and no doubt Mr. Orinda did the right thing.

Accordingly, we do hereby declare the trial of the two appellants in this matter a nullity. Allow the appeal of each Appellant. Quash his conviction and set aside the sentence imposed upon him. We order each appellant to be set at liberty forthwith unless lawfully detained in some other cause.

Dated this 1st day of November 2005.

J. M. KHAMONI

JUDGE

H. M. OKWENGU

JUDGE