



REPUBLIC OF KENYA

IN THE CHIEF MAGISTRATE'S COURT

AT NAKURU

*Criminal Appeal 463 of 2003*

*(From original conviction and sentence in Criminal Case No. 1320 of 2003 of Principal Magistrate's Court, Nyahururu )*

**JOSEPH MURIMI MWANGI.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGEMENT**

The appellant has appealed against the original conviction and sentence in Nyahururu Criminal Case No. 1320 of 2003. In that case, the appellant had been charged for the offence of Robbery, contrary to section 296(1) of the Penal Code. The facts of the prosecution case as stated in the charge sheet are as follows:-

***“On the night of 15th and 16th February, 2003 at Huruma Estate in Nyandarua District within Central Province robbed Charles Mwangi Ndibui of kshs.1,500.00, an identity card an a brown wallet and at or immediately before or immediately after the time of such robbery used actual violence to the said Charles Mwangi Ndibui”***

After a full trial, the appellant was found “Guilty” and convicted accordingly. Consequently, the learned magistrate viz, Ms L. K. Mutai sentenced the appellant to 4 years imprisonment. During the hearing of the appeal, the state through Mr. Gumo, Asst. DPP stated that he did **not** support the conviction since the appellant was partly prosecuted by a person who was not a public prosecutor. He therefore termed the proceedings to be a nullity.

Besides the above, Mr. Gumo also submitted that since the appellant has served a substantial portion of his sentence, the state was not requesting for a re-trial.

In reply the appellant stated that he concurred with what the Asst. DPP has stated.

This court has carefully perused the record of appeal. Apparently, the case was partly prosecuted by Cpl. Shireka and Sgt. Maina. Both officers are below the rank of Inspector of Police as required by the law. In view of the above, this Court hereby concurs with Mr. Gumo that the proceedings are a nullity since the same were not entirely conducted by either an Inspector of Police or a more Senior officer. That apart, the Court has also noted that out of the 4 years sentence, the appellant has already served over 2 years. I am sure that the appellant has already learnt his lesson.

In view of the above, the appellant is hereby “Discharged”. He should be released forthwith unless held

lawfully. Those are the orders of the Court.

**MUGA APONDI**

**JUDGE**

**Judgement read, signed and delivered in Open Court in the presence of the appellant and Mr.**

**Koech, Snr. State Counsel.**

**MUGA APONDI**

**JUDGE**

**20th December, 2005**