



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL APPEAL 632 OF 2000

(from original conviction and sentence in Criminal Case
No. 4524 of 1999 of the Senior Principal Magistrate's
Court at Machakos)

DAVID KITHOKA KYANGANGA APPLICANT

VERSUS

REPUBLIC RESPONDENT

J U D G M E N T

The trial of the Appellant in the Lower Court was partly conducted by Police Constable Karisa. In view of the express provisions of Section 85 (2) of the Criminal Procedure Code and the two decisions of the Court of Appeal – CRIMINAL APPL. NO. 67 OF 2002 – ROY RICHARD ELIREMA & ANOR – VS- REPUBLIC and – CRIMINAL APPL. NO. 142 OF 2002 – SILVESTER KELI KAKUMI –VS- REPUBLIC (both unreported) on the issue, that trial was a nullity. Consequently we allow the Appeal, quash the conviction and set aside the sentence.

The evidence on record was insufficient to sustain a conviction on the charge of robbery with violence. There was a break in the chain of events. The Appellant cannot therefore be firmly placed at the scene of crime. Similarly the circumstances obtaining at the time of the alleged robbery with violence were not conducive and or favourable for identification positive or otherwise of the Appellant. In the circumstances it would be futile to order a re-trial. The Appellant shall therefore be released from prison forthwith unless he is otherwise held for some other lawful purpose.

Dated and delivered at Nairobi this day of..... 2004.

M. S. A. MAKHANDIA

Ag. JUDGE

L. K. KIMARU

Ag. JUDGE