

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL APPEAL NO. 888 OF 2002

**FROM ORIGINAL CONVICTION AND SENTENCE IN CRIMINAL
CASE NO. 693 OF 2001 OF THE RESIDENT MAGISTRATE'S COURT
AT GATUNDU**

JOSEPH NJOROGE GATURA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

These two appeals are consolidated. The two appellants were convicted of the offence of Robbery c/s 296(1) of the Penal Code and sentenced to two years imprisonment each. This appeal arises from that conviction.

As the first appellate court, I have evaluated the evidence afresh. When this appeal came up for hearing, the learned counsel for the republic conceded the appeal by the second appellant Titus Mburu Karanja. He however, supported the conviction of Joseph Njoroge Gatura. The complainant was robbed at about 8.00pm. Before the incident she was with pw2 and pw3 with whom she parted. She then met two people and one of them made her fall. A fight followed and she held onto the appellant. She screamed and both pw2 and pw3 rushed back. On arrival they found the complainant still holding onto the appellant.

While being led to the police station, the appellant escaped but surrendered later. His escape is a reflection of guilt. He promised to produce the money he had robbed the complainant of but failed. He was known to both pw1 2 and 3.

It is my judgment that the offence was proved beyond doubt against the appellant Joseph Njoroge Gatura. The sentence of imprisonment under that section includes, corporal punishment. In addition to 2 years imprisonment, the appellant shall receive 2 strokes of the cane and be under police supervision for a period of 5 years after completion of sentence. In respect of appellant Titus Mburu Karanja, he was only named by his co-accused. There was no evidence of robbery against him. His conviction was most unsafe. His appeal must be allowed. Accordingly Titus Mburu Karanja's conviction is hereby quashed and sentence set aside. He shall be set free forthwith unless otherwise lawfully held.

Orders accordingly.

MBOGHOLI MSAGHA

JUDGE

19/2/2003