



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NYERI**  
**HIGH COURT CRIMINAL APPEAL NO. 274 OF 2002**  
**(D.M.'S MUKURWE-INI CR. 421/01)**

**PAUL MUTHUMA MUCHINE.....APPELLANT**  
**VERSUS**  
**REPUBLIC.....RESPONDENT**

**JUDGMENT**

From what has been brought to my hearing of this appeal where the Appellant was sentenced to five years imprisonment with six strokes of the cane after being convicted of the offence of robbery contrary to section 296(1) of the Penal code, I find that the conviction was not based on sufficient evidence.

The robbery took place at about 1.30a.m. and there is no evidence of identification of the Appellant by anyone at that time. Subsequently the evidence of P.W.1 the Complainant, is not clear as to how he came to know the Appellant and the Appellant's home. From his evidence, P.W.1 was only told by that one Charles Maina was offered a pump for sale. P.W.1 advised that Charles Maina buys the pump on P.W.'s behalf.

Charles Maina bought the pump which P.W.1 took to the police and P.W.1 went with the police to arrest the Appellant whom P.W.1 had not even known before. Charles Maina did not go with them and P.W.1 does not say Charles Maina had shown him the Appellant for any reason.

Charles Maina P.W.2 in his evidence did not say where he was when he pointed out the Appellant to P.W.1. P.W. 2 did not also know the home of the Appellant.

The pump alleged to have been sold by the Appellant changed hands, after the alleged sale, between the P.W.2 and P.W.1 before it reached the police and P.W.1 therefore had the opportunity to put the mark he came to say had been on his pump before his pump was stolen.

The evidence of P.W.3, the Complainant's wife, did not add anything of value over and above the evidence of her husband.

P.W.4 P.C. Olwen Matu was not the investigating officer and I do not see how he came to testify that the Complainant identified the pump in that one sentence evidence on that issue.

In the circumstances, this appeal is allowed, the conviction quashed and the sentence set aside.

The Appellant be set at liberty forthwith unless lawfully detained in some other cause.

Dated this 1st day of August, 2003.

**J. M. KHAMONI**

**JUDGE**