



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL DIVISION**

**CRIMINAL APPEAL NO 1122 OF 1997**

**(FROM ORIGINAL CONVICTION AND SENTENCE IN CRIMINAL  
CASE NO. 14663 OF 1996 OF THE PRINCIPAL MAGISTRATE'S  
COURT AT MAKADARA)**

**BONIFACE MUNGAI GACHANJA.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

The applicant was convicted of the offence of robbery with violence c/s 296 (2) of the Penal Code and sentenced to death. He appealed.

To date since the conviction on 5th September 1997, his appeal has not been heard.

For reasons that are not clear, the original file from the lower court was not forwarded to the High Court even after the appeals were admitted to hearing three years ago. The delay has had fatal consequences. The applicant's co-accused in the lower court is said to be deceased.

Even when the lower court file was eventually forwarded to the High court the record was incomplete. The appeal cannot be heard under such circumstances. The only order that commends itself to me is that Criminal appeal No. 1122 of 1997 should be and is hereby allowed. However, there shall be a re-trial of the applicant as soon as shall be practicable before another magistrate of competent jurisdiction.

Order accordingly.

**Dated and delivered at Nairobi this 5th day of June, 2002**

**MBOGHOLI MSAGHA**

**JUDGE**