



REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT NAIROBI  
CRIMINAL APPEAL NO. 808 OF 2001

FROM ORIGINAL CONVICTION AND SENTENCE IN CRIMINAL  
CASE NO. 3092 OF 2000 OF THE CHIEF MAGISTRATES COURT AT  
THIKA

JOHN MUSYOKA MUTHENGA.....APPELLANT  
VERSUS  
REPUBLIC.....RESPONDENT

J U D G M E N T

These appeals are consolidated. The five appellants were convicted of three counts of robbery c/s 296(1) of The Penal Code and sentenced to three years imprisonment with two strokes of the on each count. They were also to be under police supervision for 5 years after completion of sentence. Prison terms were to run concurrently.

They lodged appeals following the said conviction.

At the hearing of these appeals the learned counsel for the state conceded the appeals. I have also gone through the record. I have not seen the connection between the robbery and the recovery of the firearm to solidify the charge.

The identification of the appellants was not proved and the learned trial magistrate observed as much in her judgment. With respect therefore I agree with learned counsel for the republic that the convictions were unsafe.

Accordingly these appeals are allowed convictions quashed and sentences set aside. The appellants shall be set free forthwith unless otherwise lawfully held.

Orders accordingly.

Dated and delivered at Nairobi this 25th day of November 2002.

**MBOGHOLI MSAGHA**  
**JUDGE**