



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL APPEAL NO.589 OF 1999

**(From original Conviction and Sentence in Criminal Case
No.2276 of 1998 of the Chief Magistrate's Court at Thika)**

**HARRISON RUNO MAINA.....APPELLANT
VERSUS
REPUBLIC.....RESPONDENT**

J U D G M E N T

The appellant was charged for Robbery with Violence contrary to section 296(2), P.C. The evidence showed, as observed by the learned Magistrate, that the complainant was not able to identify any of the robbers when he was robbed on 7/7/98 and as such found the appellant not guilty of the robbery charge. The appellant was arrested some three weeks after on 28/7/98 for possessing a toy pistol and the Magistrate convicted him contrary to section 34(1), of the Firearm Act. It be noted that the appellant was only charged for the robbery. There was no charge against him for possessing the imitation firearm which he used or made any attempt to use it to commit any criminal offence, contrary to section 34(1) of the Firearm Act, Cap.114, Law of Kenya. Indeed in the judgment the Magistrate said:

“The evidence against the 1st accused (the appellant) is that he was found in possession of a toy pistol, there is no evidence connecting the toy pistol to the robbery which occurred in Thika.”

It must be said that in view of the above findings, the conviction of the appellant, contrary to section 34(1) of the Firearm Act cannot be sustained.

ORDER

I quash the conviction and set aside the sentence. The appellant be released forthwith.

Dated and delivered at Nairobi this 20th day of September, 2001.

V.V. PATEL

JUDGE