



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MURANG'A**  
**CRIMINAL APPEAL NO 151 OF 2013**  
**(FORMERLY NYERI CRIMINAL APPEAL NO 121 OF 2010)**  
*(Appeal against Conviction and Sentence in Murang'a*  
*SPM Criminal Case No 519 of 2009 E. K. Usui, SRM)*  
**HARRISON MURIGI MUNJUU.....APPELLANT**  
**VERSUS**  
**REPUBLIC.....RESPONDENT**  
**J U D G M E N T**

1. The Appellant herein, **Harrison Murigi Munjuu**, was convicted after trial of one count of **robbery with violence** contrary to **section 296(2)** of the **Penal Code**. It was alleged in the charge that on 15/12/2005 along Murang'a/Kiriaini road in Murang'a District of the Central Province, jointly with others not before the court, and while armed with dangerous weapons, namely pistols, they robbed one **Erastus Kihara Huruko** of motor vehicle registration number KAN 052 make Toyota Corolla E100 and cash KShs 15/00, all valued at KShs 350,015/00, and that immediately after the time of the robbery they wounded the said Erastus Kihara Huruko. For this count he was sentenced to death as required by law.

2. The Appellant was also convicted of a second count of **consorting with a person in possession of a firearm contrary** to **section 89(2)** of the Penal Code. The particulars of this offence were that on 15/12/2005 at Kibirigwi Trading Centre along Karatina-Sagana road in Kirinyaga District of the Central Province, he consorted with one George Karanja Njuguna (alias Abudullahi Ngulasho), who has since died, a person who, without reasonable excuse, had in his possession a firearm, namely a Mekanog (serial number invisible) in circumstances which raised the presumption that the said firearm was intended to be used in a manner prejudicial to public order. For this offence he was sentenced to six months imprisonment.

3. The Appellant appealed against both convictions and sentences. He was represented by counsel in the appeal. Counsel's main submissions were that the charge was defective in that while it was alleged in the particulars of the offence that the complainant was wounded by the robbers immediately after the time of the robbery, he was in fact injured long after the robbery when the motor vehicle was involved in an accident. Learned counsel also submitted that whereas the complainant stated that he was robbed on 15/12/2005, the police who were involved in giving chase stated that the robbery took place on 16/12/2005. It was therefore learned counsel's view that the conviction was not supported by the evidence placed before the trial court and was unsafe.

4. Learned prosecution counsel for the Republic did not support the convictions. He submitted that the evidence placed before the trial court left a lot to be desired and that there were many gaps in it.
5. I have carefully read the record of the trial court in order to evaluate the evidence placed before it and arrive at my own conclusions regarding the same. This is my duty as the first appellate court. I have however borne in mind that I did not myself see and hear the witnesses, and I have given due allowance for that fact.
6. It appears that the Appellant was previously tried, convicted and sentenced for the same offences. Apparently on appeal to the High Court the convictions were set aside and a re-trial ordered. The re-trial resulted in the two convictions now appealed against. The re-trial also appears to have taken place many years after the alleged offence. It is therefore not surprising that the prosecution case was riddled with contradictions and gaps. I will point out only a few.
7. The complainant (PW1) stated that he was robbed of his motor vehicle on 15/12/2005 at about mid-day and shortly thereafter he was rescued by the police from the boot of the motor vehicle where he had been placed by the robbers. The police had apparently given chase and in the process the stolen motor vehicle was involved in a collision with another motor vehicle and it overturned. However, the testimony from the police (PW3) was that the robbery was reported to them on the evening of 15/12/2005, and that they commenced investigations on the following morning. The only other police officer who testified was PW5 who merely produced in evidence exhibits which had been handed over to him by the investigating officer who was never called to testify. There was no proper evidence of how the Appellant was arrested, and the police officers who allegedly rescued the complainant were never called to testify.
8. There was no independent evidence, beyond the complainant's say-so, placed before the trial court. Why were the police officers who apparently rescued the complainant and recovered the stolen motor vehicle, and apparently shot and killed one suspect at the scene, not called? There was also evidence that there were many members of the public who apparently responded to the accident and sounds of gunfire, yet none of them was called to testify.
9. The Appellant testified under oath and called one witness. His defence was that he was merely a victim of circumstances who was caught up in the accident and mistakenly pointed out as one of the robbers. His witness was his father, and he called him as a witness of good character. He was not challenged in any way in cross examination on the Appellant's character.
10. The Appellant's convictions are entirely unsafe and cannot be allowed to stand. I will allow this appeal in its entirety; both convictions are quashed and the sentence of death set aside. Unfortunately the sentence of imprisonment in count 2 has long been served. The Appellant shall be set at liberty forthwith unless otherwise lawfully held. It is so ordered.

**DATED AT MURANG'A THIS 3<sup>RD</sup> DAY OF NOVEMBER 2016**

**HPG WAWERU**

**JUDGE**

**DELIVERED AT MURANG'A THIS 4<sup>TH</sup> DAY OF NOVEMBER 2016**