

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
APPELLATE SIDE
CRIMINAL APPEAL NO.525 OF 1998**

**(From Original Conviction and Sentence in Criminal Case No.19 of
1998 of the Chief Magistrate's Court at Thika)**

**SOLOMON WAINAINA MBURUAPPELLANT
VERSUS
REPUBLIC RESPONDENT**

J U D G M E N T

The appellant was charged and convicted with robbery contrary to section 296(1) of the Penal code. He was sentenced to 3 years imprisonment with 2 strokes of the cane. His appeal to this court is against both the conviction and sentence. The particulars of the charge were that on the 19/12/1997 at Gatitu Village in Thika Township in Thika District the appellant jointly with others not before the court robbed the complainant IRUNGU MWANGI of his Bicycle Frame NO.R15588 and two loaves of bread all valued at Shs.1940/= and at or immediately before or immediately after the time of the said robbery used actual violence to the said IRUNGU MWANGI. The complainant in his evidence told the court that he was robbed of the said bicycle by 3 people on 19/12/1997 the appellant was one of them. He reported the matter to the KANU YOUTH Chairman and to the police. Later the seat of the said robbed Bicycle was recovered from outside the house of the one Kimani who had said that the same was sold to him by the accused. Later the accused was arrested and charged with this offence.

The Learned State Counsel does not support the conviction and rightly so, on the ground that the appellant was not found with the said seat which belonged to the robbed bicycle. And that the said Kimani from the said was recovered was not called to testify. There was no evidence to connect the appellant to the said robbery. I agree with the Learned State Counsel that the case against the appellant was not proved beyond any reasonable doubt as required by the Criminal Law.

I therefore allow the appeal, quash the conviction and set aside the sentence. I order that the appellant be set at liberty immediately unless otherwise lawfully held.

Dated and Delivered at Nairobi this 27th day of October 1999.

J.L.A. OSIEMO

J U D G E