



REPUBLIC OF KENYA

IN THE COURT OF APPEAL OF KENYA

AT NAIROBI

CRIMINAL APPEAL 28 OF 1994

**GABRIEL KARIAMBURI MURAYA.....
.....APPELLANT**

AND

**REPUBLIC.....
.....RESPONDENT**

(Appeal from the Conviction and Sentence of High Court of Kenya at Nairobi (Mr.

Justice Porter J., Mbaluto J.) dated 1st October, 1990)

IN

H.C.CR. A. NO. 170 OF 1988

JUDGMENT OF THE COURT

This is a second appeal against the conviction of the appellant. The appellant was convicted on 29th day of January, 1988 contrary to section 296(1) of the Penal Code of robbery and sentenced to 10 years of imprisonment with 10 strokes and 5 years police supervision.

Section 361(1) of the Criminal Procedure Code makes it quite clear that this court shall not hear an appeal under that section on a matter of fact, and also that severity of sentence is a matter of fact. This court cannot take a different view as the two courts below have gone into the issues of fact properly.

Mr. Wandugi for the appellant argued issues of fact decided upon by both courts below and finally relied basically upon what he called major discrepancies of contradictions in evidence of prosecution evidence.

The Appeal judges in the superior court (on first appeal) properly considered the issue of discrepancies when they said:

"The Learned Trial Magistrate properly considered all this evidence, although she did not notice the discrepancies to which our attention has been drawn. Those discrepancies are undoubtedly there, but the whole of the evidence supports the two duty watchmen to such an extent that we are satisfied that their

credit is not affected thereby:"

We find no discrepancy which goes to suggest that we have a right to inquire into the facts. There are facts which justify conviction and we need not go into the same.

Mr. Wandugi also went into the issue of allegedly excessive sentence. This court cannot inquire into this point, as the issue of severity of sentence is a matter of fact.

In the result this appeal has no merit and we order it to be dismissed.

Dated and delivered at Nairobi this 31st day of March, 1995.

J.M. GACHUHI

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JUDGE OF APPEAL

P.K. TUNOI

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JUDGE OF APPEAL

A.B. SHAH

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR