



**IN THE COURT OF APPEAL OF KENYA**  
**AT NYERI**  
**Criminal Appeal 97 of 2003**

**JOSPHAT KIGORWE MURURU ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Appeal from a judgment of the High Court of Kenya at Meru (Juma & Kasanga, JJ) dated 11<sup>th</sup> July, 2002*

**In**

**H.C. Cr. A. No. 301 of 2001)**

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**JUDGMENT OF THE COURT**

Josphat Kigorwe Mururu, the appellant herein, was among eight persons who were tried before A.O. Muchelule, Esq., the then Chief Magistrate at Meru, on three counts of robbery with violence contrary to **section 296 (2)** of the Penal Code. The appellant was the only person who was convicted on all the three charges. Some of his co-accused were acquitted under **section 210** of the Criminal procedure Code; others were acquitted in the final judgment of the trial Magistrate. Upon his conviction, the appellant was sentenced to death on each of the three counts. We have repeatedly said that it is wrong to sentence a person to death on more than one count for the simple reason that a person cannot be hanged three times over.

The appellant appealed to the High Court. That court (Juma & Mulwa, JJ) fully heard the appeal and purported to write a judgment. A copy of that alleged judgment is to be found at pages 61 to 63 of the record of appeal before us. The purported judgment is undated and unsigned. We are unable to fathom how such a situation can arise but it is a common occurrence in the Nyeri circuit and that is all we can say on the matter.

**Section 169 (1)** of the Criminal Procedure Code appears to deal with judgments when a court is exercising its original jurisdiction, but it provides that a judgment:-

***“-----shall be dated and signed by the presiding officer in open court at the time of pronouncing it.”***

We would see no reason for drawing a distinction between a judgment written in the exercise of original jurisdiction and one written in the exercise of an appellate jurisdiction. In both cases the judgment must be dated and signed so that the person purporting to have written it can take responsibility for it. In this particular case we do not know if the document appearing at pages 61 to 63 of the record was actually written by the two learned Judges of the High Court.

This Court can only hear and determine an appeal from a judgment or ruling of the superior court. There is no valid judgment of the High Court in the purported appeal before us and hence there can be no valid appeal to us. We accordingly order that the appellant's appeal to the High Court shall be heard **de novo** by a different bench of two Judges and a valid judgment i.e. one that is dated and signed be rendered by that court. Thereafter, the appellant can still come to the Court if there be necessity for his coming back. We so order.

Dated & delivered at Nyeri this 31<sup>st</sup> day of October, 2008

**R.S.C. OMOLO**

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**JUDGE OF APPEAL**

**E.M. GITHINJI**

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**JUDGE OF APPEAL**

**J.W. ONYANGO OTIENO**

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**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR.**