



**REPUBLIC OF KENYA**  
**IN THE COURT OF APPEAL**  
**AT NAKURU**  
**CORAM: OMOLO, O'KUBASU & GITHINJI, J.J.A.**  
**CRIMINAL APPEAL NO. 162 OF 2003**

BETWEEN

PETER NDUNGU KIIHIKO ..... APPELLANT  
AND  
REPUBLIC ..... RESPONDENT

(Appeal from the judgment of the High Court of Kenya at Nakuru (Apondi  
J) dated 4th July, 2003

in  
H.C.CR.A. NO. 251 OF 2000)

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**JUDGMENT OF THE COURT**

The appellant herein was convicted of robbery contrary to *section 296 (1) of the Penal Code* but when the appeal came up for hearing before Muga Apondi, J. he revised the conviction to robbery with violence contrary to *section 296 (2) of the Penal Code*. The learned counsel for the appellant has drawn our attention to the provisions of *section 359 (1) of the Criminal Procedure Code* which refers to appeals by two judges.

Since the practice by the High Court is that appeals be heard by two judges unless there is a written authority by the Chief Justice directing that the appeal be heard by one judge we are satisfied that there was an error on the part of Muga Apondi, J. in proceeding with the hearing of the appeal while sitting as a single judge. For these reasons we allow the appeal and set aside the conviction and sentence of death imposed on the appellant. We further direct that the appeal be re-heard by a bench of two judges. Meanwhile the appellant shall continue to serve the sentence imposed by the trial magistrate.

**Dated and delivered at Nakuru this 21st day of September, 2004.**

R. S. C. OMOLO

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JUDGE OF APPEAL

E. O. O'KUBASU

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JUDGE OF APPEAL

E. M. GITHINJI

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**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**