



IN THE COURT OF APPEAL

AT NYERI

(CORAM: GICHERU, TUNOI & LAKHA JJ A)

CRIMINAL APPEAL NO 180 OF 2000

SIMON NYUTU GICHOHI.....APPELLANT

VERSUS

REPUBLIC.....REPUBLIC

(Appeal from conviction and sentence of the High Court at Nyeri, Angawa J, dated November 9, 1994

in

H.C.Cr.Case 20 of 1993)

JUDGMENT OF THE COURT

The appellant Simon Nyutu Gichohi was convicted of murder and sentenced to death on 9th November, 1994, by the High Court of Kenya (Angawa J) sitting at Nyeri.

It is submitted by Mr. Kariuki, for the appellant, that the judgment that was pronounced by the learned trial Judge is illegal in that it was signed by herself together with two of the assessors who took part in the trial in contravention of section 169 of the Criminal Procedure Code. With respect we agree with him.

The judgment in the record is a collective judgment co-signed by the assessors. This is indeed, not only peculiar, but also irregular. Section 169 aforesaid mandates that every such judgment shall be signed by the judge alone in open court at the time of pronouncing it. This grave irregularity is sufficient to dispose of this appeal as we believe that the manner in which it was written has occasioned grave injustice to the appellant.

We think that we need not revisit other fundamental errors committed by the learned Judge in the course of the trial, such as for example, failure to sum up to the assessors and the need for them to give their opinion.

In the circumstances, we allow the appeal, quash the conviction and set aside the sentence of death imposed on the appellant. We order that he be set at liberty forthwith unless otherwise lawfully held.

Dated and delivered at Nyeri this 14th day of May, 2002

J.E GICHERU

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JUDGE OF APPEAL

P.K TUNOI

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JUDGE OF APPEAL

A.A LAKHA

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JUDGE OF APPEAL