



REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT NYERI

(CORAM: TUNOI, LAKHA & KEIWUA, JJ.A.)

CRIMINAL APPEAL NO. 114 OF 2001

BETWEEN

JAMES KAROKI NDUNGU

APPELLANT

AND

REPUBLIC

RESPONDENT

(Appeal from an Order of the High Court of Kenya at Nyeri (Mr.

Justice Juma) dated 24th September, 1999

in

H.C.CR.A. NO. 462 OF 1998)

JUDGMENT OF THE COURT

The appellant appeals against the summary rejection of his appeal by the superior court (Juma, J.) on 24 September, 1999 under section 352(2) of the Criminal Procedure Code thereby confirming sentence of 6 years' imprisonment plus 6 strokes of the cane on a charge of robbery contrary to section 296(1) of the Penal Code.

Mr. Oluoch who appeared for the Republic conceded and, in our view rightly, that the summary dismissal of the appeal by the superior court was, with respect, wrong. He confirmed that at least two of the grounds, that is, numbered 4 and 5, raised points of law which merited consideration.

As Mr. Oluoch did not support the conviction and rightly so, we do not consider it necessary to go into any further details. We allow the appeal, quash the conviction and set aside the sentence. The appellant is ordered to be set free forthwith unless otherwise lawfully held.

Dated and delivered at Nyeri this 30th day of October, 2001.

P.K. TUNOI

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JUDGE OF APPEAL

A.A. LAKHA

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JUDGE OF APPEAL

M. KEIWUA

.....

JUDGE OF APPEAL

I certify that this is

a true copy of the original.

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