**Kariuki and another v Republic**

**Division:** Court of Appeal of Kenya at Nakuru

**Date of judgment:** 30 September 2005

**Case Number:** 185/04

**Before:** Omolo, Githinji and Waki JJA

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*[1] Criminal law – Evidence – Doctrine of recent possession of stolen property.*

**Editor’s Summary**

The appellants were convicted of the offence of robbery with violence contrary to section 296(2) of the

Penal Code and sentenced to death. Their appeal, challenging the finding that they were identified, was sustained. However, the court still proceeded to dismiss the appeal on the grounds that the first appellant’s cap was found at the scene of the robbery and that he led the police to the house where the stolen items were recovered; and that the second appellant was found in recent possession of the complainant’s items. Hence, the present appeal.

**Held** – The second appellant was found in possession of goods recently stolen from the complainant and a presumption that he was one of the robbers was properly drawn. (*Gichina v Republic* [1970] EA 105; *Ibrahim Lekalero and another v Republic* Criminal appeal number 52 of 1999 (UR) distinguished). The first appellant’s conviction was upheld mainly because he led police to the house of the second appellant where stolen goods were recovered and not because his cap was allegedly found at the scene. Since he led police to the house where the goods were recovered, he is deemed to have been in constructive possession of the stolen goods jointly with the second appellant.

Appeal dismissed.

**Cases referred to in judgment**

(“**A**” means adopted; “**AL**” means allowed; “**AP**” means applied; “**APP**” means approved; “**C**” means

considered; “**D**” means distinguished; “**DA**” means disapproved; “**DT**” means doubted; “**E**” means

explained; “**F**” means followed; “**O**” means overruled)

*Gichina v Republic* [1970] EA 105 – **D**

*Ibrahim Lekalero and another v Republic* Criminal appeal number 52 of 1999