**Katumo and another v R**

**Division:** High Court of Kenya at Nairobi

**Date of Judgment:** 2004

**Case Number:** 174 and 183/00

**Before:** Ochieng and Makhandia AJJ

**Sourced by:** LawAfrica

**Summarised by:** A Mwanzia

*[1] Criminal law – Appeal – Retrial – Factors to be considered by court before ordering a retrial.*

**Editor’s Summary**

The appellants had been convicted on charges of robbery with violence contrary to section 296(2) of the

Penal Code. Following the conviction, they were sentenced to death. They appealed on both conviction and sentence. When the appeal came up for hearing, the State conceded the appeal on the grounds that unqualified prosecutors had participated in the proceedings contrary to the provisions of sections 85(2) and 88 of the Criminal Procedure Code. The State then made an application for re-trial on the grounds that the evidence which was adduced before the trial Court was overwhelming and that therefore the appellants should not be permitted to enjoy their freedom simply because of a technicality during the trial.

**Held** – A retrial will be ordered only where the original trial was illegal or defective; it will not be ordered where the conviction is set aside because of insufficiency of evidence *Suma v Republic* [1964] EA 481 followed. The charges against the appellants arose from a very serious incident in which four people lost their lives through the hands of merciless robbers. The interests of justice would best be served by a re-trial.

**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)

*Suma v Republic* [1964] EA 481 – **F**

**Judgment**