**Ngarachu and another v Republic**

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

**Date of Judgment:** 3 June 2004

**Case Number:** 10/00

**Before:** Ochieng and Makhandia AJJ

**Sourced by:** LawAfrica

**Summarised by:** A Mwanzia

*[1] Criminal procedure –* Autrefois *convict – Accused persons charged with same offence for which he*

*had earlier been convicted – Whether latter conviction can stand – Section 77(5) Constitution of Kenya.*

**Editor’s Summary**

The appellants were charged and convicted of the offence of robbery with violence contrary to section

296(2) of the Penal Code. At the appeal, it transpired that the appellants had been charged earlier with the offence of simple robbery contrary to section 296(1) of the Penal Code (Chapter 63) for which they were convicted and sentenced. The charges related to the same offence and the complainant was one and the same person.

**Held** – Section 77(5) of the Constitution provide for the principle of *autrefois* convict and the appellants should not have been charged with the same offence for which they had earlier been convicted of. They have therefore suffered injustice and the appeal would be allowed.

**No cases referred to in judgment**