

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA OF KISII

Criminal Appeal 41 of 2004

CALEB OTIENO OLOO KUNGAA APPELLANT

VERSUS

REPUBLIC RESPONDENT

(From original conviction and sentence of the SRM's court at Oyugis in criminal case No. 148 of 2003)

JUDGMENT:

The appellant was convicted for the offence of robbery with violence contrary to s. 296 (1) Penal Code in that on 31st January 2003 at Kachieng sub-location of Rachuonyo District jointly with another they robbed PETER ODHIAMBO of eight woolen carvings valued at shs.450 and used or threatened to use actual violence. After full trial he was convicted by the Resident Magistrate Oyugis and sentenced to six years imprisonment and 3 strokes of the cane. His appeal now is against sentence only.

The appellant was a first offender. He asked for leniency in mitigation. Though they threatened the complainant with a knife they did not injure him. The value of the goods robbed was shs.450/- and they were recovered. In the circumstances the sentence of 6 years imprisonment was excessive and if the trial magistrate properly considered these circumstance he should have awarded a lesser sentence. The sentence was manifestly harsh and excessive.

I therefore allow the appeal and set aside the sentence of 6 years imprisonment and 3 strokes. Since the appellant has served over two and half years of the sentence I substitute it with one for the period already served.

Appellant to best at liberty forthwith unless otherwise lawfully held.

Dated 17th March 2006.

KABURU BAUNI

JUDGE

Cc – Mobisa

Mr. Kemo for State

Appellant present