IN THE HIGH COURT OF KENYA
AT NAKURU
CRIMINAL APPEAL NO. 194 OF 2001
(From original conviction and sentence in Criminal Case No. 104 of 2000 of the Chief Magistrate's Court at Nakuru – Mrs. S. Muketi)
JOHN GITHINJI MWIKA…….APPELLANT
VERSUS
REPUBLIC……..RESPONDENT

JUDGMENT
From the record, it is apparent that the appellant had initially been charged for the offence of robbery contrary to Sec. 296 (2) of the Penal Code. However, on conclusion of the trial, the learned Magistrate viz, Mrs. S. Muketi – Senior Resident Magistrate reduced the offence to that of robbery contrary to Sec. 296 (1) of the Penal Code.

Apparently, the appellant has already served almost 3½ years of his sentence. The original sentence was 4 years and 1 stroke of the cane. Due to his sickness, the state has not opposed his appeal on sentence alone. The decision by the learned Senior State Counsel is wise and reasonable.

In view of the above, the Court hereby reduces the sentence to the period that has already been served. Besides the above, the Court hereby sets aside the corporal punishment of 1 stroke of the cane. The appellant should be released forthwith unless lawfully held.
MUGA APONDI
JUDGE
Judgment written, read signed and delivered in open Court.
MUGA APONDI
JUDGE19TH FEBRUARY, 2004