

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII
CRIMINAL APPEAL NO.230 OF 2003

(From original conviction and sentence in Criminal Case No.1231 of 2003 of the
Chief Magistrate's Court at KISII. – S. M. S. SOITA ESQ., S.R.M)

JOSEPH AMENYA NYAMBANE APPELLANT

VERSUS

JOSEPH AMENYA NYAMBANE RESPONDENT.

JUDGMENT

Appellant was convicted for the offence of Robbery with violence c/s. 196 (1) Penal Code on his own plea. He was sentenced to 7 years imprisonment, 4 strokes of the cane and 5 years Police Supervision.

In his first ground of appeal he stated that the plea was not unequivocal. He further stated that 7 years was harsh and excessive.

The appellant pleaded guilty to the offence. Initially he was charged under S.296 (2) of the Penal Code. He pleaded not guilty. The complainant gave evidence. Later the charge was reduced to that of robbery c/s.196(1) Penal Code. Record shows the substituted charge was read to the appellant and he replied in Kisii language. The facts then were read to him and he said they were correct. He was then convicted and he went a head to mitigate. There is nothing to show that he did not understand what was going on he fully participated. During the hearing of the appeal he only complained of the long sentence. I therefore find that he properly pleaded to the offence and I uphold the conviction.

As to the sentence he was sentenced to 7 years. The offence of robbery is serious. However he was treated as a first offender. He is a family man of 52 years. 7 years is on the higher side in the circumstances. I will therefore set it aside and substitute it with one of 3 years imprisonment.

As for the four strokes of the cane when he was sentenced the Criminal Miscellaneous Amendment Act had not come into effect and offence of robbery attracted corporal punishment. The Amendments came into effect after that and removed Corporal punishment. The spirit of the Act was to do away with all form of corporal punishment. I therefore set aside sentence of 4 strokes. The order of 5 years police supervision stands.

It is so ordered.

KABURU BAUNI

JUDGE.

6/7/04

Dated and delivered on 6th July 2004. Mr. Kemo for state. Appellant present.

KABURU BAUNI

JUDGE.

6/7/04