



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT MACHAKOS**

**CRIMINAL APPEAL NO. 158 OF 2002**

**KAUNDA MUTUKU:..... APPELLANT**

**VERSUS**

**REPUBLIC:..... RESPONDENT**

**J U D G E M E N T**

The appellant, Kaunda Mutuku appeals against the sentence imposed on him in Kangundo Criminal Case 831/93. He faced two counts of robbery Contrary to Section 296 (1) of the Penal Code and was sentenced to serve 3 years imprisonment and 5 years imprisonment on each count and they were to run concurrently. He had initially appealed against both conviction and sentence but abandoned the appeal on conviction. The appellant had been sentenced to 7 years imprisonment in Cr. Appeal No.1534/93 after appealing from the judgment of Kangundo Court in Cr. Case 444/93 in which he had been sentenced to death for an offence of Robbery with Violence. That sentence was to run with effect from December 1993. It means that the appellant would serve a total of 12 years imprisonment in total. He claims to have served 11 years so far and that he has been rehabilitated, he has learned a trade in carpentry and is remorseful and so he requests the court to release him so that he can go home to practice his trade.

The appeal is opposed. The learned state counsel submitted that the appellant is a notorious offender and produced his record of previous convictions; that he has not shown the area in which he is trained or that there is a job ready for him out here. It is his submission that the appellant serves his full term. I have considered submissions on behalf of the appellant and the state. It is not in dispute that the appellant is a habitual offender. From the record of previous convictions availed to court, he was first convicted in 1987, followed by another conviction in 1988. He was then convicted for the three offences of robbery for which he is serving sentence. Though the appellant claims to be rehabilitated it is only his word. We do not have any evidence to that effect.

There is no evidence that he suffers from TB as alleged. I do not find there to be any convincing mitigating factors to warrant the court extend its mercy to the appellant so that he does not serve the remaining balance of one year imprisonment. He can continue to perfect his skills in carpentry which has also not been proved for the next one year so that he comes out a fully rehabilitated man. The appeal lacks merit, it is hereby dismissed.

Dated, read and delivered at Machakos this 14th day of October 2004.

**R.V. WENDOH**

**JUDGE**