



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT MOMBASA  
APPELLATE SIDE  
CR. APPEAL NO.417 OF 1994**

**(Being an appeal from Original Criminal Conviction and sentence in Criminal Case No.3980 of 1993 of the Chief Magistrate's Court at Mombasa – G. Aburili, PM)**

**ALFONCE EDWARD LIMO ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

**Coram: Before Hon. Justice Mwera  
Hon. Justice Maraga  
Miss Mwaniki for the State**

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

The appellant was charged with 4 counts in the lower court. The first charge was under S.296 (2) Penal Code in that on 5/8/93 at Munula – Ndalala Trading Centre Kajiado with others not before court while armed with dangerous weapons (firearms) they robbed Paulina Muthoni of cash Sh.3,500/- and soon before or after that robbery they used personal violence on her.

In count 2 also under S. 296 (2) Penal Code the offence on the same date and place was committed against Sakimba Babu from whom KSh.4,500/- and TSh.150,000/- was stolen.

Count 3 also under S.29(2) Penal Code concerned Joseph Kibwana of Lesesia village Taita Taveta on 18/8/93 who was robbed of KSh.1800/-, TSh.4000/- and car ignition keys.

In the last charge the appellant again with others not before court robbed Geoffrey Ndolo of cash in Kenya and Tanzania currency on 18/8/93 at the said Lesesia Village Taita-Taveta.

After trial the appellant was convicted under S.296(1) Penal Code and ordered to serve ten (10) years plus two (2) strokes of the case for counts 1, 2 and 3 and twelve (12) years with 3 strokes on count 4. There was a further order that the appellant, a Tanzanian, be repatriated to his country, after serving the sentence.

He filed this appeal challenging the manner in which the identification parade was conducted. And also that none of the members of the public who arrested the appellant testified before the learned trial magistrate and that he was not caught with any Kenya currency as stated by one witness. That the learned trial magistrate did not consider both sides of the case and that the sentence was harsh and excessive.

By the time we were hearing this appeal the appellant had only two years to go. He abandoned the grounds of conviction and argued the sentence only. That he had been in prison for so long without seeing his parents and relatives. That he had reformed greatly by learning a trade (tailoring) while in prison.

The learned State Counsel accepted the appellant's plea but maintained that the order of repatriation be executed.

After hearing the above we were satisfied that the lower court sentence be set aside but substituted with one to the extent of the prison term so far served. In the result that the appellant be set at liberty at the end of today's business, unless otherwise lawfully held. However he will be repatriated to his country

Tanzania as the lower court ordered.

Save for the substitution of the sentence this appeal is dismissed. Judgment accordingly.

**Delivered on 23rd November, 2004.**

**J.W. MWERA**

**JUDGE**

**D. MARAGA**

**AG. JUDGE**