



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL APPEAL NO. 1017 OF 2002

OUMA OMBENJO.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

CONSOLIDATED WITH

CRIMINAL APPEAL NO.1018 OF 2002

(From original conviction(s) and Sentence(s) in Criminal case No. 2825 of 2002

of the Senior Principal Magistrate's Court at Kibera (J. Siganga – S.R.M.)

STANLEY KINUTHIA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

The two Appellants, **OUMA OMBENJO** and **STANLEY KINUTHIA** (hereinafter referred to as the 1st and 2nd Appellant respectively) had their Appeals consolidated having arisen out of the same trial. Both Appellants were convicted of the offence of **ROBBERY WITH VIOLENCE** contrary to **Section 296 (2)** of the Penal Code. They were sentenced to death as mandatorily provided in the law. They were dissatisfied with the said conviction and by implication the sentence, and therefore lodged these Appeals.

When the Appeal came up for hearing, both Appellants indicated that they were not prepared to proceed on account of not having been served with the proceedings.

The state through learned counsel **MR. MAKURA**, indicated that it was conceding to the Appeal basically on account of the offence having been committed on 12th April 2002 as per the charge, which, according to **MR. MAKURA** was way after the Appellants had been arrested. We have since looked at the original charge sheet and have confirmed that the date of the offence in the main count of **ROBBERY WITH VIOLENCE** contrary to **Section 296 (2)** of **Penal Code** was the 7th April 2002. The date 12th April 2002 was a typographical error on the typed proceedings of the trial Court record. The basis of concession by the learned state counsel was therefore mistaken.

Consequently we find that justice requires that we set aside the proceedings of these Appeals and have it re-heard afresh for two reasons. In order to give;

1. The Appellants an opportunity to be heard. They had not been served with the proceedings and at least one of them indicated that they had a counsel who was to argue his appeal and who was absent. They did not make any submission on their Appeals.

2. To give the Respondent an opportunity to be heard on the merits of the Appeal.

Accordingly, we set aside the proceedings of these two appeals and order that new dates for the hearing of the Appeal on the merits be set on priority basis.

Orders accordingly.

Dated at Nairobi this 17th day of December 2004.

LESIIT

F.A. OCHIENG'

JUDGE

Ag. JUDGE

Read, signed and delivered in the presence of ;

LESIIT

F.A. OCHIENG'

JUDGE

Ag. JUDGE