

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL APPEAL NO. 303 OF 2000

**From Original Conviction and Sentence in Criminal Case No.1000 of 1999
of The Principal Magistrate's Court at Maseno)**

**EDWIN OCHIENG OYOKO.....APPELLANT
VERSUS
REPUBLIC.....RESPONDENT**

JUDGMENT

The appellant Edwin Ochieng Oyoko was convicted of the offence of Robbery with violence c/s. 296(2) of the Penal Code and sentenced to death. Aggrieved by the said conviction, he appealed.

At the hearing of his appeal, the learned counsel for the republic submitted that this was a fit case for substitution to Robbery c/s 296(1) of the Penal code.

We have looked at the record. The injuries sustained by pw2 and which were noted by pw1 cannot be sustained on evidence as the examining officer cannot be said to have been qualified to give such evidence under section 77, as amended by Act No. 14 of 1991, of the Evidence Act Cap.80 Laws of Kenya. No X-ray report was produced in evidence and at most the injuries can only be described as soft tissue injuries.

The value of the goods allegedly robbed of the complainant was also minimal and most of them were recovered. We therefore agree that the appellant should have been convicted of Robbery c/s 296(1) of the Penal Code.

The accused was said to be a first offender. The charge sheet shows that he was arrested on 3rd September, 1999 and arraigned in court on 8th September, 1999. He has now served just over 3 years and three months from the time he was convicted. The total period of incarceration however adds up to 3½ years.

In our judgment, we consider this sufficient punishment. We are inclined to allow the appeal on sentence and order that the death sentence is hereby set aside and in place hereof sentence the appellant to the period already served. He shall however receive 2(two) strokes of the cane after which he shall be released unless otherwise lawfully held. On his release, he shall be under police supervision for a period of 5 years.

Orders accordingly.

Dated and delivered at Nairobi this 27th day of March, 2003.

MBOGHOLI MSAGHA

JUDGE