



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL DIVISION**

**CRIMINAL APPEAL NO. 279 OF 2000**

**From Original Conviction and Sentence in Criminal Case No. 3910 of 1999  
of The Principal Magistrate's Court at Machakos)**

**PIUS NDAMBUKI KIVUVA.....APPELLANT  
VERSUS  
REPUBLIC.....RESPONDENT**

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

The appellant was convicted of the offence of robbery with violence C/s 296(2) of the Penal Code and sentenced to death. This appeal arises from that conviction.

At the hearing of this appeal, it transpired that he ought to have been convicted of the lesser offence of Robbery C/s 296(1) of the Penal Code. The learned counsel for the Republic did not have any objection to the substitution.

With respect we agree and set aside the conviction under section 296(2) aforesaid and quash the death sentence. In place thereof, we enter a conviction under section 296(1) of the Penal Code.

The appellant was said to be a first offender. The value of goods stolen was Kshs. 1,300/-. From the date of his arrest to date, he has been in custody for a total of three years and five months, three years of which were in prison service on death row. We consider this to be sufficient punishment and therefore sentence him to imprisonment equal to the period already served. He shall receive two strokes of the cane and then be released unless he is otherwise lawfully held. Thereafter he shall be under police supervision for a period of five years.

**Orders accordingly.**

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

**MBOGHOLI MSAGHA  
JUDGE**