

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL DIVISION
CRIMINAL APPEAL NO.1376 OF 2000

**(From Original Conviction and Sentence in Criminal Case 19782 of 1999 of the
Principal Magistrate's Court at Makadara)**

DAVID MUTUA MUMINA..... APPELLANT
VERSUS
REPUBLIC..... RESPONDENT

JUDGMENT

The appellant filed an appeal challenging his conviction and sentence in a charge of Robbery contrary to section 296 (2) of the Penal Code. The particulars of the charge were that on the 20th day of October 1999 at Majengo in Nairobi within Nairobi area, jointly with others not before the court while armed with knives and iron bars robbed Peter Aluku of cash 800/= and a pair of shoes valued at 200/= all valued at Ksh.1,000/= and at or immediately after the time of the said robbery used actual violence on the said Aluku Wafuho. The appellant was convicted and sentence to death by the learned trial magistrate one C. Rinjeu Esquire.

At the time of hearing this appeal the appellant offered to plead guilty to a lesser offence of theft contrary to S.275 of the Penal Code. Mr. Okello for the state did not oppose the appellant's offer.

We have had a chance to peruse the proceedings. We have noted the low value of subject matter that was stolen according to the charge sheet we have no reason to reject that offer made by the appellant and which has been accepted by the state. We have noted that the appellant was sentenced on 20/9/2000 and has now served about 2 ½ years jail sentence. We have further noted that the appellant now looks very sickly. It is on the above stated grounds that we find that the appellant has served sufficient jail sentence for substituted offence. We order that the appellant should be released forthwith unless otherwise lawfully held.

Order accordingly.

Delivered in open court in the presence of the parties.

M. MSAGHA

JUDGE

27/3/2003

R.M. MUTITU

JUDGE

25/3/2003