



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**CRIMINAL APPEAL NO. 395 OF 2001**

**(Being an appeal from original conviction and Sentence in Criminal Case No. 2960 of 1999 the Resident Magistrate's Court at Mombasa –R. Ndubi, RM)**

**CALEB OCHIENG NG'ONG'A ..... APPELLANT  
VERSUS  
REPUBLIC ..... RESPONDENT**

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

Both counsels agree that the sentence was not proper in this case and I do with respect agree. There is no reason whatsoever advanced by the learned Magistrate as to why he should have called for a probation report in respect of one accused and not the otherS. There is nothing to show that the others were having any previous convictions. The appellant has served about 17 months in prison and doing the best I can in the circumstances, I will reduce his sentence to such term as would enable him to be released immediately. As the appeal against conviction was abandoned, I do dismiss appeal against conviction.

Appellant's sentence is reduced to such term as would enable him to be set free forthwith and he is so set free unless otherwise lawfully held.

The 3rd accused below did not appeal. However he will also benefit from this. I will make the same order in respect of the third accused in the court below SIMON NYAGA KAMUDI whose sentence is also revised and is set free forthwith unless otherwise lawfully held.

**Dated and delivered at Mombasa this 18th Day of March, 2003.**

**J.W. ONYANGO OTIENO**

**JUDGE**