



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CRIMINAL REVISION CASE NO.3 OF 2003**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

- 1. SAMMY MAINA KAMAU**
- 2. DUNCAN KAMAU KABIRU**
- 3. FRANCIS NJOROGE KAMAU.....ACCUSED**
- 4. MOSES KAGWATHI NGUGI**
- 5. JOSEPH CHEGE NGUGI**

**JUDGMENT ON REVISION**

This matter was brought to the attention of this court under a letter signed by the Senior State Counsel, Mr. Mutuku and dated May 29th 2003. It called for the CMC Criminal Case No.1041/2002 NAKURU, be called for with a view of exercising powers conferred by the High Court under Section 364(1),(2)(3) and Section 365 of the Criminal Procedure Code. The State Counsel also informed the court that he had unconfirmed information that the accused persons in that case were about to be released on Presidential Amnesty to be effected on 1st June, 2003. In order not to act in vain the court issued for the production of the said accused persons and also called in the lower court's proceedings. The said accused persons have subsequently been produced in court except the 3rd Accused who is said to have died in prison.

I have perused the entire record of the lower court. The accused persons were charged with two counts of Capital Robbery contrary to Section 296(2) of the Penal Code. The first to fourth accused persons were also charged with two counts of being in possession of firearm and ammunition without a Firearms Certificate contrary to Section 4(1) as read with Section 3(2) of the Firearms Act Cap 114.

All five accused persons were found guilty of having played various roles in the robbery the subject matter of Counts 1 and 2. The 1st accused was also found guilty of possession of firearm and ammunition and convicted.

In reducing the capital robbery to simple robbery the court noted:-

***“In this case, no injuries or extreme psychological pressure was exerted on the victim. This being the case, the court invokes the provisions of Section 179 of the Criminal Procedure Code and finds the accused guilty of simple robbery contrary to Section 296(1) of the Penal Code and convicts each of the accused in both the two counts.”***

It is the court’s exercise of discretion in invoking Section 179 of the Criminal Procedure Code that prompted the letter earlier referred to. It is trite law that a charge of Robbery with Violence under Section 296(2) of the Criminal Procedure Code is proved if any of the Ingredients of the offence under the quoted Section is proved Section 296(2) provides:-

***“Section 296(2) If the offender is armed with any dangerous or offensive weapon or instruments or is in company with one or more other person or persons or if, at or immediately before or immediately after the time of the robbery, he wounds, beats, strikes or uses any other personal violence to any person he shall be sentenced to death.”***

The trial court reduced the charge on grounds that no injuries or extreme psychological pressure was exerted on the victim. With due respect the State grounds are nowhere stated as basis of reducing a Capital robbery to a simple robbery.

I am satisfied on considering the trial court’s judgment that the accused persons participated in the said robbery together and while armed with offensive weapons. The ingredients of capital robbery under Section 296(2) of the Criminal Procedure Code were in my view fully met by the prosecution as required. It was irregular and an erroneous exercise of the Learned Magistrate’s discretion to reduce the charge as she did.

I do hereby, in exercise of this court’s powers under Section 364(1) of the Criminal Procedure Code alter the trial court’s order of reducing the charge and reinstate the capital charge of Robbery. Under same provisions and powers I do enhance the sentence in the first two counts from nine months imprisonment in each count to death as by law provided in each count.

For counts 3 and 4 the Learned Trial Magistrate passed an illegal sentence. Section 4 of the Firearms Act provides for minimum sentences for the offence charged. The trial Magistrate imposed sentence below the Minimum provided by the court. I invoke same powers provided under Section 364 of the Criminal Procedure Code and alter the sentence in Counts 3 and 4 by setting aside the nine months provided and substituting with seven years imprisonment in each of the Counts 3 and 4.

This affects 1st, 2nd and 4th Accused persons. This court’s order be typed and supplied to the Accused and the Attorney General.

Orders accordingly.

Dated and delivered at Nakuru this 18th day of June, 2003.

In presence of

**JESSIE LESIIT**

**JUDGE**