



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**CRIMINAL APPEAL NO. 280 OF 2001**

**(Being an Appeal against Conviction and Sentence in Criminal Case No. 102 of 2000 of the Senior Resident Magistrate's Court at Kilifi – P.M. Mutani)**

**MWALIMU KARISA ..... APPELLANT**

**- VERSUS -**

**REPUBLIC ..... RESPONDENT**

**R U L I N G**

The Appellant has by Notice of Motion filed on 23rd March, 2003 applied for leave to adduce additional evidence.

The nature of the additional evidence is the entry in the Bomba police Station O.B of the 20/1/2000 concerning the report of the said robbery and for which the appellant was convicted. The State Counsel opposed the application and rightly so on ground that the appellant had the opportunity to adduce the said evidence during the trial but he choose not to. We have considered the nature of the evidence the appellant wishes to adduce and although we agree he has not given any reasons for failure to call for the same at the trial. We do not consider that such evidence if allowed at this stage would cause any prejudice to the Republic's defence on the main appeal. The appellant has been sentenced to death and we consider it fair in the interest of justice to allow him the said chance. He had conducted his own defence at the trial and the necessity of calling such evidence may have not occurred to him at the time.

In the circumstances, the application is allowed. The file to be placed before the Deputy Registrar for purposes of arranging for the

taking of such evidence as provided for under Section 358 (2) of the Penal Code.

**Dated and delivered at Mombasa this 10th June, 2003.**

**L.O. OUNA**

**JUDGE**

**P.M. TUTUI**

**COMMISSIONER OF ASSIZE**