



**REPUBLIC OF KENYA**

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

**APPELLATE SIDE**

**CRIMINAL APPEAL NO. 1142 OF 2000**

**(From original conviction and sentence in Criminal Case No. 1108 of 2000  
of the Chief Magistrate's Court at Makadara**

**DAVID OTIENO IMBO.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

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

The appellant was convicted and sentenced to death for the offence of Robbery with violence c/s 296(2) of The Penal Code. He lodged this appeal. At the hearing of his appeal his advocate informed the court that the appellant wished the conviction to be substituted to fall under section 296(1) of the Penal Code. The learned counsel for the Republic did not raise any objection and on our part, having considered the evidence adduced in the lower court also agree.

We set aside the conviction and sentence under section 296(2) and in place thereof enter a conviction for Robbery under section 296(1) of the Penal Code.

The complainant was robbed of shs. 500/-. No medical evidence was adduced. The appellant was treated as a first offender. He has been in custody since 2nd June, 2000 when he was arrested. To date that is about three years. We consider this sufficient punishment. We accordingly sentence him to the period already served such that he shall be released forthwith. He shall however receive two strokes of the cane and be under police supervision for a period of five years after his release.  
Orders accordingly.

**Dated and delivered at Nairobi this 4th day of June, 2003**

**MBOGHOLI MSAGHA**

**JUDGE**

**R. M. MUTITU**

**JUDGE**

**Miss Okumu for the state**

**Mr Nyangoro for Oyiembo for appellant**