



**REPUBLIC OF KENYA**

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

**CRIMINAL APPEAL NO. 1427 OF 2000**

**(From Original Conviction and sentence in Criminal Case No. 5392 of 2000  
of the Snr. Principal Magistrate's Court at Kibera.)**

**STEPHEN GATEI KIROBI.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**CONSOLIDATED WITH**

**CRIMINAL APPEAL NO. 1428 OF 2000**

**STEPHEN GATEI KIROBI.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

These two appeals are consolidated. The two appellants were convicted of the offence of robbery with violence and sentenced to death. They appealed.

At the hearing of these appeals, the learned counsel for the Republic did not oppose the appellant's request for the conviction to be substituted to section 296(1) of the Penal code.

We have gone through the record. We agree that this is a fit case for substitution. Accordingly the conviction under section 296(2) of the Penal Code is quashed and death sentence set aside. In place thereof we enter a conviction under section 296(1) of The Penal code.

The complainant was robbed of shs. 500/- cash and a Tv aerial worth kshs. 480/-. The aerial was recovered. The appellants were arrested on 25th June, 2000 and convicted on 24th November, 2000. They have been in custody ever since. They were said to be first offenders.

We consider the period of incarceration sufficient punishment for this offence. Accordingly we sentence both appellants to imprisonment equivalent to the period already served such that they shall be set free forthwith. However each shall receive two strokes of the cane and on their release be on police supervision for a period of five years.

Orders accordingly.

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

**MBOGHOLI MSAGHA**

**JUDGE**

**R. M. MUTITU**

**JUDGE**