



**REPUBLIC OF KENYA**

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

**CRIMINAL APPEAL NO.42 OF 1997**

**[From Original Conviction and Sentence in Criminal Case No.473 of**

**1995 of the S.P. Magistrate at Kakamega]**

**ACCUSED – DANIEL KHASWENU INGUTE**

**AND TWO OTHERS..... APPELLANT**

**VERSUS**

**REPUBLIC..... RESPONDENT.**

**JUDGMENT**

The three appellants were convicted and sentenced to death on count one which relates to Robbery with Violence contrary to S.296(2) of the Penal Code.

In respect of count two they were sentenced to three years imprisonment, while they were sentenced to 18 months imprisonment on counts three and count four. The three appellants were dissatisfied with both such conviction and as well as the sentence meted out against each respective count by Mr. Kanyangi the Senior Principal Magistrate Kakamega. They thus filed these appeals which were consolidated hence the present appeal.

We have carefully analysed the testimony of the prosecution witnesses as shown in the lower court's record.

We are satisfied with the State Counsel that the appeal against the 1st, 2nd and 3rd appellants should be dismissed given the evidence on record. We have noted that the complainant and the appellants were neighbours and that there existed some past grudge over the death of the 1st appellant's father there before. It is noted that the 1st appellant had reason to suspect the deceased as well as the appellant with commission of the offence. These issues were considered by Mr. Kanyangi in his considered judgment. Mr. Kanyangi considered the testimony of the other witnesses carefully. We are satisfied that Mr. Kanyangi came up with the correct findings.

We have no reason to interfere with the findings made by the learned trial magistrate based on the evidence on record. We therefore dismiss this appeal in so far as the same relates to conviction and the sentence handed down to the three appellants herein.

Order accordingly.

**Delivered in Nairobi this 13th day of August 2003.**

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**M. MBOGHOLI**

**JUDGE**

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**R.M. MUTITU**

**JUDGE**