

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CRIMINAL APPEAL NO.355 OF 1999

(Being an appeal from original conviction and Sentence in Criminal Case No.1913 of 1999 of the Chief Magistrate's Court at Mombasa)

**NYAE NGAO NYONDOAPPELLANT
VERSUS
REPUBLIC RESPONDENT**

J U D G M E N T

Nyae Ngao Nyondo had been charged with Robbery with violence contrary section 296(2) Penal Code but was convicted of Robbery with Violence under Section 296(1) Penal Code and was sentenced to serve 7 years imprisonment and five strokes of the cane. He filed this appeal against both conviction and sentence.

The learned state Counsel Miss Mwaniki filed a notice today 30th September 2003 seeking enhancement of sentence on grounds that the reduction of the charge of Robbery with Violence contrary to Section 296(2) Penal Code to Robbery with violence contrary to Section 296(1) by the trial magistrate was unjustified.

However, before this appeal could be heard, the appellant has decided to withdraw it altogether.

This move by the appellant has now denied the Attorney General the opportunity to apply for setting aside of the conviction under section 296(1) Penal Code and substitution of a conviction under S.296(2) Penal Code.

This appeal is now marked withdrawn. The conviction of the appellant under Section 296(1) Penal Code remains in force and the sentence of Seven (7) years imprisonment also remains in force. However corporal punishment, which has been outlawed by the Criminal (Law Amendment) Act No.5 of 2003, is set aside.

It is so ordered.

This 30th September 2003.

**A.G.A. ETYANG
JUDGE**