



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Criminal Appeal 1216 of 1999

(From Original Conviction and Sentence in Criminal Case No.709 of 1997 of the Chief Magistrate's Court at Nairobi).

**FREDRICK MUCHENE.....
.....APPELLANT**

VERSUS

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

CONSOLIDATED WITH

CRIMINAL APPEAL NO.1050 OF 1999

(From Original Conviction and Sentence in Criminal Case No.709 of 1997 of the Chief Magistrate's Court at Nairobi).

**SAMUEL NGUNJIRI WAINANA.....
.....APPELLANT**

VERSUS

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

J U D G M E N T

Criminal appeal Nos.1261 of 1999 and 1959 of 1999 are consolidated.

Both appellants were convicted on each of the count Nos. 1,2 and 3 of Robbery with Violence, contrary to section 296(1), P.C. and sentenced to death. On the 4th and 5th counts they were convicted on each of the said counts of Possessing a firearm and ammunitions without firearm a certificate

respectively. The sentence of the said two counts being three years imprisonment each to run concurrently. The convictions and sentences of the above five counts were on 22/9/1998.

Both appellants now admit that they committed the above five offences but have urged us to substitute their convictions on count Nos.1, 2 and 3 for Robbery, contrary to section 296(1), P.C. and set aside the death sentence.

The learned State counsel, Miss Ambasi has no objection to the substitution of the convictions against the appellants for contrary to section 296(1), P.C. on all the three counts.

None of three complainants – PW1, 4 and 8 in the robbery counts was able to identify any of their robbers. However, the rifle and the motor vehicle, some of the properties robbed of were recovered from the appellant's not very long after the robberies.

We have seriously given consideration to the request of the appellants for the substitution of the robbery convictions. We note that none of the complainants received any serious injury during the course of the robberies. Indeed the learned Lady State Counsel for the Republic has no objection to the substitutions. With respect, we agree.

The appellants were in remand from March, 1997 until 22/9/98 when they were convicted and sentenced, i.e. a period of 18 months in remand before the case finally ended in the court below. There is no revision for robbery sentence.

Order:

We substitute the conviction on each of the court Nos. 1, 2, and 3 for Robbery, contrary to section 296(1), P.C. and set aside the death sentences against both the appellants.

We sentence each of the two appellants to 5½ years imprisonment with effect from 22-9-1998 plus one stroke each on each of the three counts, i.e. Nos.1, 2 and 3. The sentence of three years imprisonment on count Nos.4 and 5 against to

run concurrently with effect from 22-9-1998.

Dated and delivered on 24th January, 2002.

V.V. PATEL

JUDGE