

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL APPEAL NO.1501 OF 2000

**(From Original Conviction and Sentence in Criminal Case No.1227 of 2000
of the Principal Magistrate's Court at Kibera).**

**MOSES NDUNGU KAMANU.....APPELLANT
VERSUS
REPUBLIC.....RESPONDENT**

J U D G M E N T

The appellant has now admitted that he, jointly with others not before the court, robbed the complainant of her motor vehicle Toyota Corolla, Reg. No. KAG 288Q on 24/1/2000 along Kiambu road at Nduati as charged on count No.1. He has urged us to substitute the conviction on it for Robbery, contrary to section 296(1), P.C.

The evidence was that the complainant was robbed of her said car at about 5.45 p.m. on the material day by the appellant and dothers armed with pistols.

In considering the request for the substitution of the conviction we note that no one was injured in the course of the robbery. Further that the motor vehicle was recovered the next day. Bearing in mind these facts, the learned state counsel, Mr. Monda does not object to the substitution and rightly so. We find this case to be a proper one for the substitution asked for.

On the 2nd , 3rd and 4th counts the appellant was convicted on each of them of possessing a firearm without a firearm certificate. Having considered the evidence adduced in the court below on the said counts we find that the convictions were proper and uphold them. The appellant had no previous conviction and was in remand for one year before the case finally ended. There is no remission for robbery sentence.

ORDER

The conviction on the 1st count is substituted for Robbery, contrary to section 296(1), P.C. and the death sentence is set aside. We sentence the appellant on the said 1st count to 4 ½ years imprisonment with effect from 8/12/2000 plus two strokes. The sentence one ach of the 2nd, 3rd and 4th Counts is reduced to 4 ½ years imprisonment. The prison sentences on all the four counts to run concurrently.

V.V. PATEL

JUDGE

27/2/2002

W.K. TUYOIT

JUDGE

27/2/2002