



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL DIVISION
CRIMINAL APPEAL NO. 779 OF 1999

**(From Original Conviction and Sentence in Criminal Case
No.295 of 1998 of the Principal Magistrate's Court at Maseno**

VINCENT OMONDI AHENDA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

Mr. Agina for the appellant has informed us that the appellant now admits that he committed the robberies for which he was convicted as charged. The appellant has also said so us. Mr. Agina, the learned advocate for the appellant, has urged us to substitute the convictions against the appellant on each count for Robbery, contrary to section 296(1), P.C. as none of the complainants was injured.

The evidence on record in the court below was that the appellant and his cronies, on 2nd April, 1998, traveled with the complainants in Matango Bus together towards Siaya District of Nyanza Province and on the way the appellant and others with him robbed the complainants as charged and convicted.

In considering the request for the substitution we note that none of the complainants was injured in the course of the robberies and that the robberies in the instant case were not so serious in nature. It is our considered view that this is a suitable case for the substitution of the conviction, contrary to section 296(1), P.C on each count. Mr. Okello, the learned State Counsel for the Republic also concurs to it.

The appellant had no previous count and was in remand for about 14 months. There is no remission for Robbery sentence.

ORDER

We substitute the conviction against the appellant on each of the seven counts for Robbery, contrary to section 296(1), P.C. and set aside the death sentence. We sentence the appellant to 4 years imprisonment on each count with effect from 14-6-99 to run concurrently plus one stroke on each count.

Dated and delivered this 7th day of March, 2002.

V.V. PATEL

JUDGE

W. TUIYOT

JUDGE

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PROCEEDINGS

17/9/2001

Coram: Mbogholi, J

For State – Omwega

Appellant present in person – represented by Mr. Agina

Kugwa – court clerk

Court: Hearing on 15/10/2001.

MBOGHOLI-MSAGHA

JUDGE

15/10/2001:

Coram:Mbogholi, J

Mbito, J

Mr. Omwega for state

Appellant – reply Mr. Agina

Ndungu – court clerk Kugwa court clerk

Mr. Kiage: I hold brief for Mr. Agina. He has just served an amended petition upon this state counsel.

Mr. Omwega:

I have been served. I need time.

MBOGHOLI-MSAGHA

JUDGE

15/10/2001

Mr. Kiage:

We apply to put in an amended petition of appeal and the petition be filed.

MBOGHOLI-MSAGHA

JUDGE

15/10/2001

Order:

Leave to file amended petition of appeal granted. For mention on 14/11/2001.

MBOGHOLI-MSAGHA

JUDGE

15/10/2001

14/11/2001:

Coram: Mbitio J

Agina for Appellant

Ms Nyamosi for State

Ndungu – court clerk

Mr. Agina:

I ask for a date.

Ms. Nyamosi: I have not looked at the file.

Order:

As the dates of this term are now full, matter hereby adjourned to the next callover, when a date will be fixed on priority basis.

G.P. MBITO

JUDGE

14/1/2002:

Coram: Mbogholi, J

Miss Nyamosi for State – for appellant

Appellant in person

Kugwa – Court clerk

Hearing on 21/1/2002.

MBOGHOLI-MSAGHA

JUDGE

21/1/2002:

Before V.V. Patel, J

Tuyoit, J

Appellant present

Agina for him

Okello, State counsel Court:

By consent hearing now on 26/2/2002.

V.V. PATEL

JUDGE

W.K. TUYOIT

JUDGE

26/2/2002

Before V.V. Patel, J

Tuyoit, J

Appellant present

Agina for him

Okello state counsel Agina:

The appellant now admits that he committed the robberies for which he was convicted on count Nos.1, 2,3,6,8,11 and 12. I pray substitution the said convictions for Robbery contrary to section 296(1), P.C. and set aside the death sentence.

The appellant had no previous conviction. He was in remand for about 1½. He is full of remorse for what he did.

Pray for utmost leniency. None was injured. Appellant: That is so.

Okello, State counsel

I do not object to the substitution.

Robbery is a serious offence. However, none was injured in the cause of the robberies.

Court: Judgment on 7/3/2002.

V.V. PATEL

JUDGE

26/2/2002