



**REPUBLIC OF KENYA**

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

**CRIMINAL DIVISION**

**CRIMINAL APPEAL NO. 998 OF 1999**

**(From Original Conviction and Sentence in Criminal Case No.3772 of 1998  
of the Chief Magistrate's Court at Thika)**

**DANSON MUIRURI MUTURI.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**J U D G M E N T**

The appellant has now admitted that he convicted the robberies as charged in court Nos.1 and 2 but he has requested us to substitute the convictions for Robbery, contrary to section 296(1), P.C. on each count.

The evidence was that the appellant jointly with others robbed the two complainants on the night of 15th November, 1998.

The 1st complainant was robbed of Shs.3,500/= cash and a radio cassette. The 2nd one was robbed of a torch, a pair of shoes, a long trouser, a coat and cash Sh.2,000/=.

In considering the request for the substitution we note that during the two robberies both complainants were injured. However, the prosecution failed to produce the medical evidence on the classification of the inquiries on the 1st complainant. The injuries of the 2nd complainant were classified as harm. The value of the properties robbed was not high.

It is our considered view that the request for the substitution, bearing in mind the nature of the robberies is for granting. Indeed, Mr. Monda, the learned state counsel for the Republic does not object to it either.

The appellant had no previous conviction and was in remand for about nine months. There is no remission for robbery sentence.

Order:

The conviction against the appellant on each of the 1st and 2nd count is substituted for Robbery, contrary to section 296(1). P.C. and the death sentences are set aside. We sentence the appellant to 4½ years imprisonment on each of the two counts to run concurrently with effect from 17th September, 1999 plus one stroke on each count. The sentence of one year's imprisonment on the 4th count stands. It to run concurrently.

**Dated and delivered at Nairobi this 25th day of February, 2002.**

**V.V. PATEL**

**JUDGE**

**W.K. TUYOIT**

**JUDGE**