

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL APPEAL NO.759 OF 1998

(From Original Conviction and Sentence in Criminal Case

**No.1132 of 1997 of the Senior Resident Magistrate's Court at
Naivasha)**

JOHN NJOROGE WAMITI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

The appellant has now admitted that he was one of the robbers who robbed the complainant as charged but has urged us to substitute the conviction for Robbery, contrary to section 296(1), P.C.

The evidence on record was that on the material day in May, 1997, when the complainant was driving a lorry Reg. No.KYZ 355, Isuzu FTR loaded with 280 bags of fertilizer along Longonot/Naivasha road in Naivasha area, the appellant and his cronies blocked it. The complainant and his turn boy were removed from the lorry and put in a pick up the robbers had. Some of them drove them away in the pick up and dumped them in Suswa area while the rest of them drove away with the lorry containing the bags of the fertilizer.

The lorry was later abandoned and recovered. The appellant was arrested and with his help some of the bags with fertilizer were recovered. The police also recovered some money from some of those who were sold some of the bags. We have considered the appellant's request for the substitution. The lorry and some bags and money were recovered. No one was injured in the course of the robbery. Mr. Monda, the learned state counsel has no objection to the substitution either and, with utmost respect, we agree. The appellant's previous conviction was in November, 1982 for which he was fined Shs.1,700/=. It must be ignored. He was in remand for one year. There is no remission for Robbery sentence.

Order:

The conviction of the appellant is substituted for Robbery, contrary to section 296(1), P.C. and the death sentence is set aside. We sentence the appellant to five years imprisonment with effect from 25th June, 1998 plus two strokes.

Dated and delivered at Nairobi this 22nd February, 2002.

V.V. PATEL

JUDGE