



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI  
CRIMINAL DIVISION  
CRIMINAL APPEAL NO.921 OF 1999

(From Original conviction and Sentence in Criminal Case No.366 of 1999 of the Principal Magistrate's Court at Machakos).

MUSYIMI MULINGE.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

The appellant now admits that he robbed the complainant as charged but has requested us to substitute the conviction for Robbery, contrary to section 296(1), P.C.

The evidence was that on 21st August, 1998, the appellant robbed the complainant when he was on his way at about 7.30 p.m. at Kariobangi Estate, Machakos . The appellant hit the complainant with an iron bar in the course of the robbery.

In considering the request for the substitution we note that the complainant was robbed of only Sh.1000/- and no more. The injury he received was not serious and it was classified as harm.

It is our considered view that the police should have used their discretion and brought the charge against the appellant of Robbery, contrary to section 296(1), P.C. in such a simple type of robbery as this one.

Mr. Monda, the learned state counsel has no objection to the substitution and rightly so. The appellant had no previous conviction. There is no remission for robbery sentence.

Order:

We substitute the conviction for Robbery, contrary to section 296(1), P.C. and set aside the death sentence. We sentence the appellant to 4 years imprisonment with effect from 25/8/99 plus 2 strokes.

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

**V.V. PATEL**

**JUDGE**

**W.K. TUYOIT**

**JUDGE**