



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL DIVISION

CRIMINAL APPEAL NO.1339 OF 1999

JAMES GITUNGO NJEHIA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

CONSOLIDATED WITH

CRIMINAL APPEAL NO.1340 OF 1999

**(From Original Conviction and Sentence in Criminal Case No.1442 of 1998
of the Chief Magistrate's Court at Nairobi).**

DICKSON MUNGAI KUNGU.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

CONSOLIDATED WITH

CRIMINAL APPEAL NO.1341 OF 1999

**(From Original Conviction and Sentence in Criminal Case No.1442 of 1998 of the
Chief Magistrate's Court at Nairobi).**

STEPHEN NDERU NJUGUNA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

Criminal Appeal nos.1339, 1340 and 1341 of 1999 are consolidated.

All 3 appellants now admit that they committed the three robberies as charged but have requested us to substitute the conviction on each of the three counts for Robbery, contrary to section 296(1), P.C.

The evidence was that on the night of 7th/8th August, 1997, the appellants jointly with others not before the court, robbed the three complainants of the household properties as specified in the particulars of the three counts. During the course of the robberies two of the three complainants were injured.

In considering the request for the substitution we note that injuries on the two complaints being of minor nature were classified as harm. Further that some of the property was recovered from 1st and 3rd appellants and they were given an option to plead guilty to the alternative counts of handling stolen property, contrary to section 322(2), P.C. We consider this to be a proper case for the substitutions asked for. Indeed, we note that the learned state counsel for the Republic, Miss. Okumu, has no objection to it either.

The 2nd and 3rd appellants had no previous convictions, whereas the 2 previous convictions of the 1st appellant were very old are ignored. There is no remission for robbery sentence.

We noted the three appellants convicted of handling stolen property in Kisumu Magistrate Criminal Case No.82 of 1997 and were sentenced to 10 years imprisonment each on 11/9/1998. All the three appellants have filed appeals against the said sentence which were heard on 21/3/2002 when the said statute of 10 years each against each of the three appellants were reduced to the period served.

We noted that in the present three appellants Contrary to section 296(1) of the Penal Code and were sentenced to death on 15/11/1999.

Order:

We substitute the conviction against the three appellants for robbery contrary to section 296(1) of the Penal Code on each of the three counts and set aside the death sentences. We sentence each of the three appellants on each of the three counts to 6½ years imprisonment to run concurrently with effect from 15/12/99 plus the stroke on each of the three counts.

Dated and delivered at Nairobi this 26th March, 2002.

V.V. PATEL

JUDGE

W.K. TUYOIT

JUDGE