



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL DIVISION

CRIMINAL APPEAL NO. 433 OF 1999

**(From original Conviction and sentence in Criminal case No 7379 of 1997
of the Principal Magistrate's Court at Kibera).**

FREDRICK AURA OMUKANGA.....APPELLANT

VERSUS

REPUBLICRESPONDENT

CONSOLIDATED WITH

CRIMINAL APPEAL NO. 434 OF 1999

**(From original Conviction and sentence in Criminal case No 7379 of 1997
of the Principal Magistrate's Court at Kibera).**

TIMONA SICHANGI WAMOTO.....APPELLANT

VERSUS

REPUBLICRESPONDENT

CONSOLIDATED WITH

CRIMINAL APPEAL NO. 1123 OF 1997

**(From original Conviction and sentence in Criminal case No 7379 of 1997
of the Principal Magistrate's Court at Kibera).**

RONALD LUSABE MASIFWA.....APPELLANT

VERSUS

REPUBLICRESPONDENT

J U D G M E N T

Criminal appeal Nos. 433 and 434 of 1999 and No. 1123 of 1997 are consolidated.

Ronald Lusabe , the appellant in the appeal No.1123 of 1997, was convicted on his own plea of guilty on all the three counts of the Robbery with Violence, contrary to section 296(2), P.C. He was warned by the magistrate on the consequences of entering the pleas of guilty but he still maintained the pleas. Before us, at the hearing of the appeals, he accepted that he committed the said robberies as charged but has urged us to substitute the convictions against him for Robbery, contrary to section 296(1), P.C. on each count.

The two appellants in the Criminal Appeal Nos. 433 and 434 of 1999 were convicted on all three counts after a full trial. Each of the said two have now admitted to us that they committed the said robberies but have requested us to substitute their convictions for Robbery, contrary to section 296(1), P.C. on each count.

The evidence was that the complaints in the first two counts are husband and wife respectively while the one in the 3rd count is their driver.

The complainants in the 1st and 2nd counts were robbed of the properties specified in the particulars of the charge on the night of 14th August, 1997 at their house at Mbagathi Ridge, Karen.

On the material night Margaret (the complainant in the 2nd count) returned to her house driving a car at about 7 p.m. and the watchman (Ronald , the appellant who pleaded guilty) opened the gate. She parked the car and as she proceeded towards the house, she was confronted by the robbers. She was taken into the house. Her two children and house servants and Margaret (the complainant) were all ordered to lie down and the appellants and their cronies started demanding for money. They were armed with pistols and simis. They tied up Margaret's hands and robbed her of the property as stated.

Further evidence was that Margaret's husband (the complaint in the 1st count) came to the house with his driver (complainant in the 3rd count) at around 10.30 p.m. when the robbers were still at his house and found his family members lying down. One of the robbers asked him to raise his hands and another one tied his eyes with polythene papers. He was ordered to lie down and a knife was place don his neck. They demanded money from him while threatening him with a pistol. They robbed him of all the household property together with cash ksh.5,000/=, 400 US dollars and 200 south African rands as stated in the particulars of the 1st count.

Thereafter, the robbers locked up all the family members in a toilet.

The robbers had tied the hands and legs of the driver, the complainant in the 3rd count. The robbers put the loot in the 1st complainant's motor vehicle and ordered his driver (the 3rd complainant) to take them to where they would order him. The driver obeyed. As directed he drove to Ngong road and then through Jamhuri park to a bridge off to Kibera slums into the forest. The appellants and their chuma got out there robbing the complainant of his Sh.1500/=, a pair of shoes and personal documents. He was then allowed to drive away, which he did, and reported the robberies to the police.

In considering the requests for the substitutions we note that there was no medical evidence to show that any of the three complainants was injured in the course of the robberies. A few of the items robbed of were recovered.

It is our considered view that this a suitable case for the substitution asked for. Indeed, Mr. Monda, the learned State counsel for Republic also concurs to it. All three appellants were first offenders. There is no remission for robbery sentence. Order:

The convictions against all the three appellants on each of the three counts are substituted for Robbery, contrary to section 296(1), P.C. and the death sentences are set aside.

Each of the three appellants is sentenced to 5½ years imprisonment on each of the three counts to run concurrently plus one stroke each on each count.

The above sentence against Ronald Lusabe Masifwa, the appellant in Criminal Appeal No.1123 of 1997 be with effect from 15th September, 1997.

The sentences against the two appellants viz, Fredrick Aura Omukanga and Timonah Sichangi Wamoto (appellants in Criminal Appeal Nos. 433 and 434 of 1999 to run with effect from 29th April 1999.

The judgment delivered on 20th day of March, 2002.

V.V. PATEL

JUDGE

W.K. TUYOIT

JUDGE