

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL DIVISION

CRIMINAL APPEAL NO.177 OF 2001

**(From Original Conviction and Sentence in Criminal Case No.45
of 1999 of the Senior Principal Magistrate's Court at Kiambu).**

CHARLES MUTITU KIGAITA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

The appellant Charles Mutitu Kigaita was on the 2nd February, 2001 convicted by the learned Senior Resident Magistrate Mr. G.M. Njuguna in Kiambu Senior Principal Magistrate's Court Criminal Case No.45 of 1999 with the offence of robbery with violence contrary to section 296(2) of the Penal Code. He was sentenced to suffer death as provided by law. He has appealed against both the conviction and sentence. However, on the 14th March, 2002 when the hearing of the appeal commenced the appellant changed his mind and admitted to have robbed the complainant jointly with others that he prayed for the substitution of robbery with violence to a lesser charge of robbery contrary to section 296(1) of the Penal Code. He also prayed that the death sentence be set aside. The learned State Counsel Mr. Otieno did not object the substitution of robbery with violence to lesser charge of simple robbery contrary to section 296(1) of the Penal Code. We have heard the submission of both the That Counsel of the appellant. We have read the lower court proceedings as well as the judgment of the learned trial magistrate. The injuries suffered by the complainant during the robbery was classified by the doctor as "harm".....the learned state counsel Mr. Ogao has no objection to the substitution of the robbery with violence contrary to section 296(2) of the Penal Code to a lesser charge of robbery contrary to section 296(1) of the Penal Code. We need not analyse the evidence adduced at the lower court during the trial. We find that this case is suitable for substitution of robbery with violence contrary to section 296(2) of the Penal Code with a simple robbery contrary to section 296(1) of the Penal Code and we hereby do so. We hereby set aside the appellant by the learned trial magistrate. The appellant was arrested on the 18th November, 1998 and reminded in custody until 2nd February, 2001 when he was convicted. He was found by the learned trial magistrate to be a first offender.

We therefore sentence the appellant to serve 3 years imprisonment plus 2 strokes of the cane, with effect from 2nd February, 2001.

Dated and delivered in Nairobi this 19th day of March 2002.

V.V. PATEL

JUDGE

W.K. TUIYOT

JUDGE