

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL APPEAL NO. 1186 OF 1999

(From Original Conviction and Sentence in Criminal Case No.8393 of 1999

of the Senior Principal Magistrate's Court at Makadara)

CHARLES OUMA ONYANGO.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

CONSOLIDATED WITH CRIMINAL APPEAL NO.1188 OF 1999

JOHN KAMAU MUGO.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

Criminal appeal Nos.1186 and 1188 of 1999 are consolidated. Both appellants have now admitted to us that they jointly robbed the complainant as charged but have earnestly urged us to substitute the conviction against each of them for Robbery, contrary to Section 296(1), P.C.

The evidence was that on the night of 24th May, 1999, both appellants broke into the kiosk of the complainant in which she was sleeping and robbed her of cash Sh.7,000/= and ran away to be arrested later. She knew both the appellants for long prior to the robbery. The money was not recovered.

In considering the request for the substitution we note that although the complainant was injured during the course of the robbery on her shoulders and the right frontal part of her head, the injuries being of minor type were classified as harm.

Bearing in my the simple nature of the robbery in this case, we find it proper to grant the request for the substitution. Miss Okumu, the learned lady state counsel also consent to it. Both appellants were in remand for about five months. The previous convictions of the 1st appellant, Charles Ouma were very old and are for ignoring. The 2nd appellant had no previous conviction. There is no remission for robbery sentence.

ORDER:

We substitute the conviction against each of the two appellants, for Robbery, contrary to section 296(1), P.C. and set aside the death sentences.

We sentence both appellants to 4 ½ years imprisonment each. With effect of 27th October, 1999 plus 2 strokes each.

Dated and delivered at Nairobi this 12th day of March, 2002.

V.V. PATEL

JUDGE

W.K. TUIYOT

JUDGE