



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**CRIMINAL DIVISION**  
**CRIMINAL APPEAL NO.480 OF 1999**

**(From Original conviction and Sentence in criminal case No. 2549 of 1996  
of the Principal Magistrate's Court at Nyahururu)**

**HARON MUTA WAWERU.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**CONSOLIDATED WITH CRIMINAL APPEAL NO.478 OF 1999**

**(From Original conviction and Sentence in criminal case No. 2549 of 1996  
of the Principal Magistrate's Court at Nyahururu)**

**JACKSON OCHOLA OWUOR.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**J U D G M E N T**

Criminal appeal Nos. 480 and 478 of 199 are consolidated.

Both appellants have now admitted that they committed the robberies for which they were convicted but have requested us to substitute their convictions for Robbery, contrary to section 296(1), P.C.

The evidence was that the appellants, jointly with others not before the court, committed the spate of robberies for which they were convicted in the areas specified in Nyandarua District on the night of 21st and 22nd September, 1996 and also on the night of 24th September, 1996. The robbers were armed with iron bars, rungs and pangas.

In considering the request for the substitution we note that the motor vehicle robbed of Mugi Macharia (PW1) was recovered. Also recovered was the motor vehicle Julius Maina (PW5) was robbed of some of the other properties of some other complainants were recovered. Further we note that the Republic produced no medical evidence on the alleged injuries and their classification in the courses of the robberies, thus leaving the loophole unplugged.

The learned state counsel, Mr. Bonda does not object to the substitutions requested. With utmost respect, we agree.

We find this case to be a proper one for the substitution of the convictions for Robbery, contrary to section 296(1), P.C.

The appellants were in remand for about 2 years and 7 months, i.e. from 24/9/96 upto 22nd April 1999, when the case was finally concluded. These delays must stop. There is no remission for robbery sentence. Both appellants were first offenders.

**Order:**

We substitute the convictions against each of the two appellants for Robbery, contrary to section 296(1), P.C. and set aside the death sentences. We sentence each of the two appellants to 5 years imprisonment with effect from 22nd April 1999 on each of the six counts to run concurrently plus one stroke each on each count.

Judgment delivered at Nairobi on 5th March, 2002.

**V.V. PATEL**

**JUDGE**

**W.K. TUYOIT**

**JUDGE**