



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI  
CRIMINAL APPEAL NO 1125 OF 2001  
From Original Conviction and Sentence Criminal Case No. 2265 of 2001 of  
the Snr. Principal Magistrate's Court at Kibera.

EVANS SHITANGWA KYAYUMBA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

CONSOLIDATED WITH

CRIMINAL APPEAL NO. 1127 OF 2001

(From Original Conviction and Sentence in Criminal Case NO. 2265 of  
2001 of Snr. Principal Magistrate's Court at Kibera)

JOSEPH NJUGUNA KAGIRI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

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CRIMINAL APPEAL NO. 1127 OF 2001

(From original conviction and sentence in Criminal Case No. 2265 of  
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JOSEPH NJUGUNA KAGIRI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

These appeals are consolidated. The three appellants were convicted of the offence of Robbery with violence and sentenced to death. These appeals arise from the said convictions.

At the hearing of these appeals, the learned counsel for the republic urged the court to consider

substituting the conviction to that under section 296(1) of the Penal Code.

We have given consideration to that submission, and after going through the record believe that, that should have been the right charge in the first place. The injuries sustained by the complainant were not of an aggravated nature and only shs. 555/- was said to have been stolen.

Accordingly the conviction under section 296(2) of the Penal code is hereby quashed and the sentence of death set aside.

We now enter a conviction for robbery c/s 296(1) of the Penal Code against each of the three appellants.

All the appellants were treated as first offenders their records were not available. They were arrested on 5th April, 2001 and sentenced on 11th October, 2001. They have been in custody for the last two years.

We order that each of the three appellants shall serve five years imprisonment from the date of conviction. In addition, each shall receive two strokes of the cane and on completion of sentence, be on police supervision for five years.

Orders accordingly

Right of appeal explained.

Dated and delivered at Nairobi this 4th day of June, 2002.

A. MBOGHOLI MSAGHA

JUDGE

R. M. MUTITU

JUDGE

Mr Bifwoli for the state