



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI(MILIMANI LAW COURTS)
CRIMINAL APPEAL NO. 596 OF 1997

FROM ORIGINAL CONVICTION(S) AND SENTENCE(S) IN

CRIMINAL CASE NO. 9960 OF 1995 OF THE PRINCIPAL

MAGISTRATE'S COURT AT KIBERA

JOHNSON SIRIKWA SURE.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The appellant Johnson Sirikwa Sure was convicted of the offence of Robbery with violence c/s 296(2) and sentenced to death. He appealed.

At the hearing of his appeal, the learned counsel for the republic observed that this was a fitting case for the application of section 296(1) to which the appellant agreed. In effect, the appellant was pleading guilty to the offence of robbery c/s 296(1) of the Penal Code.

We have perused the evidence and the judgment of the learned trial magistrate and with respect agree that the appellant ought to have been charged with the offence under section 296(1) aforesaid. The observations of the learned trial magistrate say as much.

Accordingly the appeal against both the conviction and sentence under section 296(2) of the Penal Code is hereby allowed by quashing the said conviction and setting the death sentence. We substitute therefore a conviction under section 296(1) of the Penal Code.

The appellant colluded with two other people to rob his employer. He was employed as a watchman. That was a breach of trust. To his advantage however, he was said to be a first offender. No one was injured in this incident.

The stolen motor vehicle was recovered and the value of the jewellery stolen is not specifically known. He was arrested on 24th July, 1995 and as at the time of his conviction on 8th May, 1997 and sentence on 22nd May, 1997 he had spent about two years in custody. To date he has served five years and four months in prison.

The seriousness of the offence notwithstanding we consider the said period of imprisonment sufficient in

the circumstances of the case. Accordingly, we sentence the appellant to a prison term equal to the period already served in prison to date. The appellant shall also receive two strokes of the cane after which he shall be released unless otherwise lawfully held. Upon his release, he shall be under police supervision for a period of five years.

Orders accordingly.

Dated and delivered at Nairobi this 1st day of October, 2002

MBOGHOLI MSAGHA

JUDGE