



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**APPELLATE SIDE**

**CRIMINAL APPEAL NO.1219 OF 1998**

**(From Original Conviction and Sentence in Criminal Case No.447 of 1998 of the Senior Resident Magistrate's Court at Kerugoya:**

**JOHN NJIRU MASKALI.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

The appellant admits that he was one of those who robbed the complainant but has requested this court to substitute the conviction for simple robbery. The evidence was that the appellant jointly with others broke into the complainant's house at night and robbed him of the items as stated in the particulars of the charge. They were armed with pangas and rungas. The complainant was hit with the flat side of the panga during the course of the robbery but did not receive any injury worth calling injury as a result. I have considered the nature of the evidence in this robbery. The motor vehicle of the complainant which was taken away that night was soon recovered although the other household goods were not. The complainant was not injured as observed earlier. In any view the appellant should have been charged for simple robbery. The learned State Counsel Omwega is also of the same view. The appellant was arrested in March, 1997 and was in remand upto September, 1998, i.e. 1 year and 6 months. He was convicted and sentenced to death on 29/9/98. He had no previous count. There is no remission for robbery sentence.

**ORDER:**

I substitute the conviction for Robbery, contrary to section 296(1), P.C. and set aside the death sentence. I sentence the appellant to 4 (four) years imprisonment with effect from 29-9-98 plus 3 strokes.

**Dated and delivered at Nairobi this 25th day of January, 2001.**

**V.V. PATEL**

**JUDGE**