

REPUBLIC OF KENYA
IN HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL APPEAL NO.1046 OF 1999

(From Original Conviction and Sentence in Criminal Case No.826 of 1999 of the Senior Principal Magistrate's Court at Makadara).

DANIEL GITHIRI MUNGAI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

The appellant now admits robbing the complainant of his motor vehicle Nissan Sunny Saloon, Reg. No.KAC, 533N as charged in the 1st count but has prayed for the substitution of the conviction for robbery, contrary to section 296(1), P.C. He also admits possessing the revolver as charged as charged and carjacked on the 2nd count.

The evidence was that the appellant, jointly with others, robbed the complainant of the motor vehicle on 23/12/98 and possessed the revolver at the time.

It be noted from the evidence that although the appellant was threatened with violence in the course of the robbery he was not injured at all.

We find this a proper case for the substitution. The motor vehicle was recovered at once.

The State Counsel M/S Ambari does not object to the substitution and rightly so.

The appellant had no previous conviction. He was in remand for about nine months. There is no remission for Robbery Sentence.

ORDER

We substitute the conviction for Robbery, contrary to section 296(1), P.C. and set aside the death sentence on the 1st Count. We sentence the appellant to five years imprisonment with effect from 24th September, 1999 plus two strokes. The sentence of four imprisonment on the 2nd count stands. It to run concurrently.

Dated and delivered at Nairobi this 2nd November, 2001.

G.P. MBITO

JUDGE

V.V. PATEL
JUDGE