



REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT NAIROBI  
CRIMINAL APPEAL NO.1303 OF 1999

(From Original Conviction and Sentence in Criminal Case No.606  
of 1998 of the Principal Magistrate's Court at Maseno).

**GEORGE OMWARE NYANYA & OTHERS.....APPELLANTS**

**V E R S U S**

**REPUBLIC.....RESPONDENT**

**MOSES OTIENO OKAL.....APPELLANT**

**V E R S U S**

**REPUBLIC.....RESPONDENT**

**CONSOLIDATED WITH**

**PETER OTIENO NYAMILA.....APPELLANT**

**V E R S U S**

**REPUBLIC.....RESPONDENT**

**CONSOLIDATED WITH**

**CRIMINAL APPEAL NO.1307 OF 1999**

**(From Original Conviction and Sentence in Criminal case No.606  
of 1998 of the Principal Magistrate's Court at Maseno).**

**JOSHUA OMONDI OLUOCH.....APPELLANT**

**V E R S U S**

**REPUBLIC.....RESPONDENT**

**CONSOLIDATED WITH**

**CRIMINAL APPEAL NO. 1306 OF 1999**

(From Original Conviction and Sentence in Criminal case No.606

of 1998 of the Principal Magistrate's Court at Maseno).

JOSEPH YEWA OWITI.....APPELLANT

V E R S U S

REPUBLIC.....RESPONDENT

CONSOLIDATED WITH

(From Original Conviction and Sentence in Criminal case No.606

of 1998 of the Principal Magistrate's Court at Maseno).

BEN JUMA ODHIAMBO.....APPELLANT

V E R S U S

REPUBLIC.....RESPONDENT

28/6/2001

All 6 appellants are present on Production Orders.

No appearance for Republic – served

COURT:

Each of the six appellants says that he admits committing all the four robberies but each of then respondents that the convictions be substituted for simple robberies and the death sentence be set aside.

### J U D G M E N T

Criminal Appeal Nos.1303, 1307,1308,1309,1306 and 1304 of 1999 are consolidated.

The appellants were convicted on each of the four counts of Robbery with Violence, contrary to section 296(2), Penal Code and sentenced to death.

Each appellant now admits that he took part in the commission of the robberies but has requested me to substitute the convictions for Robbery, contrary to section 296(1), Penal Code and set aside the death sentences.

The evidence was that the appellants jointly with others robbed the four complainants of the properties stated in the particulars of each count. All the said robberies were convicted on the night of 2nd July, 1998 in Bondo District.

In considering the request for the substitution I note that none of the four robberies was of value more than Shs.8,000/-. Further that no serious violence was used either in the center of the robberies. No medical evidence was produced in the court below either.

I consider this to be a suitable care for the substitution.

The appellants were arrested in July 1998 and were in remand until June, 1999 when they were convicted and sentenced. None of the appellants had any previous convicted. There is no remission for robbery sentences.

**ORDER**

I substitute the convictions against each of the six appellants on each of the four counts for Robbery, contrary to section 296(1), P.C. and set aside the death sentences.

I sentence Peter Otieno Nyamila, Joshua Omondi Oluoch and Joseph Yawa Owiti to four years imprisonment each with effect from 23rd June, 1999 plus two strokes each.

I sentence George Omware Nyanya. Moses Otieno Okal and Ben Juma Odhiambo to four years imprisonment each with effect from 30th June, 1999 plus two strokes each.

DATED and DELIVERED at NAIROBI this 28th June, 2001.

V.V. PATEL

JUDGE

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CRIMINAL APPEAL NO.1303 OF 1999**

(From Original Conviction and Sentence in Criminal Case No.606  
of 1998 of the Principal Magistrate's Court at Maseno).

GEORGE OMWARE NYANYA & OTHERS.....APPELLANTS  
V E R S U S  
REPUBLIC.....RESPONDENT

**CONSOLIDATED WITH**  
**CRIMINAL APPEAL NO.1307 OF 1999**

(From Original Conviction and Sentence in Criminal case No.606  
of 1998 of the Principal Magistrate's Court at Maseno).

MOSES OTIENO OKAL.....APPELLANT  
V E R S U S  
REPUBLIC.....RESPONDENT

**CONSOLIDATED WITH**  
**CRIMINAL APPEAL NO.1308 OF 1999**

(From Original Conviction and Sentence in Criminal Case No.606  
of 1998 of the Principal Magistrate's Court at Maseno).

PETER OTIENO NYAMILA.....APPELLANT  
V E R S U S  
REPUBLIC.....RESPONDENT

**CONSOLIDATED WITH**  
**CRIMINAL APPEAL NO.1309 OF 1999**

(From Original Conviction and Sentence in Criminal Case No.606  
of 1998 of the Principal Magistrate's Court at Maseno).

**JOSHUA OMONDI OLUOCH.....APPELLANT**  
**V E R S U S**  
**REPUBLIC.....RESPONDENT**

**CONSOLIDATED WITH**  
**CRIMINAL APPEAL NO. 1306 OF 1999**

**(From Original Conviction and Sentence in Criminal Case No.606  
of 1998 of the Principal Magistrate's Court at Maseno).**

**JOSEPH YEWA OWITI.....APPELLANT**  
**V E R S U S**  
**REPUBLIC.....RESPONDENT**

**CONSOLIDATED WITH**  
**CRIMINAL APPEAL NO.1304 OF 1999**

**(From Original Conviction and Sentence in Criminal Case No.606  
of 1998 of the principal Magistrate's Court at Maseno).**

**BEN JUMA ODHIAMBO.....APPELLANT**  
**V E R S U S**  
**REPUBLIC.....RESPONDENT**

**17/1/2002**  
**COURT:**

**The Signal from the Kisumu Main Prison,  
Ref.No.KMU/PRIS/4/6/VOL.II/326 refers.**  
**Please note that it ordered that the prison sentences of  
four years against each of the six appellants on each of the four  
count to run concurrently.**

**V.V. PATEL**  
**JUDGE**