

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL DIVISION
CRIMINAL APPEAL NO.129 OF 2000

(From Original Conviction and Sentence in Criminal Case
No.19 of 1999 of the Senior Resident Magistrate's Court at
Kiambu).

EZEKIEL NGARUIYA THUITA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

The appellant now admits that he robbed the complainant as stated but has requested me to substitute the conviction for robbery, contrary to section 296(1), P.C.

The evidence was that the appellant jointly with others robbed the complainant of her motor vehicle and the cash Sh.400/-. The motor vehicle was found with the appellant about five days later and he was arrested with it.

In considering the request for the substitution, I note that the complainant was not at all injured during the course of the robbery and the motor vehicle was soon recovered.

It is my considered view that the Police should have charged the appellant for robbery, contrary section 296(1), P.C.

The learned state counsel, Mr. Okello has no serious objection to the substitution asked for and, with respect, I agree.

The appellant had no previous conviction. He was in remand for nearly one year. 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 3½ years imprisonment with effect from 9th February, 2000 plus two strokes.

Dated and delivered at Nairobi this 27th June, 2001.

V.V. PATEL
JUDGE