

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL APPEAL NO.106 OF 2001

**(From Original Conviction and Sentence in Criminal Case
No.95 of 1999 of the Magistrate's Court at Bungoma).**

**Martin Wafula Wasilwa.....APPELLANT
VERSUS
REPUBLIC.....RESPONDENT**

J U D G M E N T

The appellant now admits that he robbed the complainant, jointly with others as stated. He has urged me to substitute the conviction for robbery, contrary to section 296(1), P.C. The evidence in the court below was that the complainant and his wife were sleeping on the night of 12th/13th January, 1999 in their house when the accused and his cronies broke into the house and robbed the complainant of his property worth about Sh.18,240/- and injured both of them.

In considering the request for the substitution I take into account that the injuries were not serious and they were classified as harm. This robbery was not of a serious nature. The appellant was arrested in January, 1999 and the trial finally ended on 25/4/2000 after many many unnecessary adjournments. I hope and trust that such delays stop. Think of the stress and mental agony of the appellant for so long. The appellant had no previous conviction. 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 3 (three) years imprisonment with effect from 25/4/2000 plus two strokes.

**Dated and delivered at Nairobi this 29th day of June, 2001.
V.V. PATEL
JUDGE**