

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL APPEAL NO.584 OF 1999

(From Original Conviction and Sentence in Criminal Case

No.755 of the Chief Magistrate's Court at Thika)

JAMES NJUGUNA MWANGI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

CONSOLIDATED WITH CRIMINAL APPEAL NO.587 OF 1999

JOSEPH MACHARIA NDUNGU.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

Criminal appeal Nos.584 and 587 of 1999 are consolidated. Both appellants have now admitted that they committed the five robberies as charged in count Nos. 1 to 5. They have urged for the substitution of their convictions on each of the said counts for robbery, contrary to section 296(1), P.C.

The evidence was that the appellants robbed the five complainants of property valued at Sh.8,670/=, Shs.5,500/= Sh.3,940/= Sh.1,200/= and sh.400/= respectively. It is clear that the injuries on none of the complainants were at all serious. The properties they were robbed of were not of high value either. All the above robberies were committed in Githurai area, Thika District on the same night of 3rd March, 1998. The appellants were soon arrested. Some of the items robbed of were recovered.

I consider this as a suitable case for the substitutions asked for. The appellants were in remand for about 15 months. None of the appellants had any previous conviction. There is no remission for robbery sentence. Order: I substitute the conviction of each of the five counts for Robbery, contrary to section 296(1), P.C. and set aside the death sentences. I sentence each of the two appellants on each of the five counts to 3 ½ years imprisonment to run concurrently with effect from 16/6/1999 plus one stroke on each count.

Dated and delivered at Nairobi this 17th day of August, 2001.

V.V. PATEL

JUDGE