



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CRIMINAL DIVISION**  
**CRIMINAL APPEAL NO. 532 OF 1999**  
(From Original Conviction and Sentence in Criminal Case No.101 of 1999  
of the Chief Magistrate's Court at Kisumu).

FANUEL MAKENZI AKOYO.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

**CONSOLIDATED WITH**

**CRIMINAL APPEAL NO. 774 OF 1999**

PETER OKOTH OTIENDE.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

**CONSOLIDATED WITH**

**CRIMINAL APPEAL NO. 775 OF 1999**

ASMAN OMAR OJINGO.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

**CONSOLIDATED WITH**

**CRIMINAL APPEAL NO. 776 OF 1999**

FREDRICK OTIENO AWINDA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

**CONSOLIDATED WITH**

**CRIMINAL APPEAL NO. 777 OF 1999**

**THOMAS OTIENO OBOK.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**J U D G M E N T**

Criminal appeal Nos. 532, 774, 775, 776 and 777 of 1999 are consolidated.

The 1st appellant, Fanuel Makenzi pleaded guilty in the court below. He still maintains his plea of guilty but requests for the substitution of the conviction for Robbery, contrary to section 296(1), P.C. The other four appellants now admit that they also committed the robbery and ask for the substitution of the conviction for contrary to section 296(1), P.C.

The evidence was that the appellants robbed the complainant of his household goods worth about sh.100,000/= on 4th March, 1999. They were armed with pangas, rungas and Somali swords at the material time. The complainant was injured in the course of the robbery but his injuries being not serious were classified as harm.

It be noted that the property the complainant was robbed of was soon recovered.

It is our considered view that bearing in mind the nature of the robbery this is a fit case for the substitution asked for. The learned State Counsel M/S Ambasi holds the same view.

The appellants were first offenders and were in remand for about three months.

There is no remission for Robbery sentence.

**ORDER:**

We substitute the conviction against each of the five appellants for robbery, contrary to section 296(1), P.C. and set aside the death sentences. We sentence the 1st appellant, Fanuel Makenzi to 4 years imprisonment with effect from 7/4/99 plus two strokes. We sentence each of the other four appellants to 4 years imprisonment with effect from 15/6/99 plus two strokes each.

Dated and delivered at Nairobi this 31st October, 2001.

**G.P. MBITO**

**JUDGE**

**V.V. PATEL**

**JUDGE**