

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL APPEAL NO.711 OF 1999

**(From Original Conviction and Sentence in the Case No. 2419 of 1998 of
the Senior Resident Magistrate's Court at Nairobi)**

RICHARD KUNGU KINYANJUI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

The appellant was charged for Robbery with Violence, contrary to section 296(2) i.e. with an alternative count of handling stolen property, contrary to section 322(2), P.C. He was convicted on the main count of the capital robbery and sentenced to death on 13th July, 1999. The appellant has now admitted that he, jointly with others, robbed the complainant as charged but has requested us to substitute the conviction for Robbery, contrary to section 296(1), P.C.

The evidence was that the appellant, jointly with two others, robbed the complainant on 9th October, 1998, of his motor vehicle, Toyota Hilax pick up, ten pieces of iron bar and cash Sh.800/=.

We note that on 10/10/1998, i.e. a day after, the appellant was arrested and the motor vehicle was recovered from him. We further note that the complainant was not at all injured in the course of the robbery and find that this is a proper case for the substitution. The learned State counsel Miss Ambasi has no objection. The appellant had no previous conviction and was in remand for about nine months before the trial so simple as this ended. There is no remission for robbery sentence.

ORDER: We substitute the conviction against the appellant for Robbery, contrary to section 296(1), P.C. and set aside the death sentence. We sentence the appellant to four years imprisonment with effect from 13th July, 1999 plus two strokes.

Dated and delivered at Nairobi this 25th October, 2001.

G.P. MBITO

JUDGE

V.V. PATEL

JUDGE