



REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT NAIROBI  
CRIMINAL DIVISION

CRIMINAL APPEAL NO.1311 OF 1999  
(From Original Conviction and Sentence in the Criminal Case  
No.126 of 1999 of the Chief Magistrate's Court at Kisumu).

STEPHEN ONYANGO AWINDA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

CONSOLIDATED WITH

CRIMINAL APPEAL NO.1312 OF 1999

(From Original Conviction and Sentence in the Criminal Case  
No.126 of 1999 of the Chief Magistrate's Court at Kisumu).

STEPHEN ONYANGO AWINDA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

CONSOLIDATED WITH

CRIMINAL APPEAL NO.1316 OF 1999

(From Original Conviction and Sentence in the Criminal Case  
No.126 of 1999 of the Chief Magistrate's Court at Kisumu).

GEORGE OTIENO WAMUNDA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

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

Criminal Appeal Nos. 1311, 1312 and 1316 of 1999 are consolidated.

Each of the three appellants now admits robbing the complainant as charged and has requested us to substitute the conviction for Robbery, contrary to section 296(1), P.C.

The evidence on record before the learned Magistrate was that the appellants robbed the complainant in his house at about 4 a.m. on 2/4/99 of his cassette and speaker valued at Sh.17,240/=.

We note that the complainant was injured on his scalp during the course of the robbery. However, the said injury was of a minor nature as it was classified as hard. Further the two items the complainant was robbed of were soon recovered.

We are of the view that the Police using the discretion should have charged the appellants contrary to section 296(1), P.C.

We find this a proper case for the substitution asked for. The learned State Counsel Miss Ambasi also agrees.

The appellants were first offenders and were in remand for about four months. There is no remission for robbery sentence. Order:

We substitute the conviction against each of the three appellants for Robbery, contrary to section 296(1), P.C. and set aside the death sentences. We sentence each appellant to 3½ years imprisonment with effect from 21st July, 1999 plus two strokes each.

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

G.P. MBITO

JUDGE

V. V. PATEL

JUDGE

REPUBLIC OF KENYA  
IN THE HIGH COURT KENYA AT NAIROBI  
CRIMINAL DIVISION  
CRIMINAL APPEAL NO.760 OF 2001

(From Original Conviction and Sentence in Criminal Case  
No.342 of 2001 of the Chief Magistrate's Court at Nairobi).

IBRAHIM OSMAN IBRAHIM.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

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

Criminal appeal Nos760 and 761 are consolidated.

Both appellants now admit that they robbed the complainant of the firearm ammunitions and a coat as charged. They have requested this court for the substitution of the convictions for Robbery, contrary to section 296(1), P.C.

The evidence was that the complainant, a police constable was on his way on 7/2/2001 with his pistol when he was robbed by the appellants as charged. Both appellants were arrested the same day and the pistol, ammunitions and the coat were soon recovered.

The complainant was not at all injured in the course of the robbery. Mr. Omwega, the learned State Counsel does not object to the substitution and rightly so.

Dated and delivered on 20th October 2001

Gideon P Ndito, J

Vinubhai Vithalbhal Patel. J