

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL APPEAL NO.873 OF 1998

(From Original Conviction and Sentence in Criminal Case

**No.45 of 1997 of the Senior Principal Magistrate's Court at
Kiambu)**

PATRICK RAMAN MAINA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

CONSOLIDATED WITH

CRIMINAL APPEAL NO.874 OF 1998

PETER WAMBOGA EKONIA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

The appeal Nos. 873 and 874 of 1998 are consolidated. Both appellants now admit that they, jointly with others, robbed the complainant as charged. They have requested us to substitute their convictions for Robbery contrary to section 296(1), P.C. The evidence on record was that the two appellants and others jointly robbed the complainant of cash Sh.600/= and some other house hold items on the night of 17th/18th April, 1997 and during the course of the robbery one of the robbers hit the complainant with an iron bar on her upper arm fracturing it.

On the issue of the substitution of the conviction, we note that the complainant's injury healed up after the treatment. Further that some of the property the complainant was robbed of was soon recovered. In our view this is a fit case for the substitution requested for. The learned State Counsel Miss Ambasi has no objection to the substitution either. The appellants were first offenders and were in remand for about 15 months before the trial finally ended. There is no remission for robbery sentence. Order:

We substitute the conviction against each of the two appellants for Robbery contrary to section 296(1),P.C. and set aside the death sentences. We sentence each of the two appellants to five years imprisonment with effect from 23/7/1998 plus two strokes each. Peter W.A Ekonia, the 2nd appellant and Patrick R. Maina, 1st appellant be repatriated to Uganda after the serving of the sentence.

Dated and delivered at Nairobi this 23rd October,2001.

G.P. MBITO

JUDGE

V.V. PATEL

JUDGE