

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL APPEAL NO.540 OF 1999

**(From Original Conviction and Sentence in Criminal Case
No.2742 of 1998 of the Chief Magistrate's Court at Nairobi).**

STEPHEN MAINA WARUI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

CONSOLIDATED WITH

CRIMINAL APPEAL NO.541 OF 1999

DAVID WAFULA MUKASA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

Criminal appeal Nos.540 and 541 of 1999 are consolidated.

Both appellants admits that they committed the robbery as charged in the 1st count and request for the substitution thereof for Robbery, contrary to section 296(1), P.C.

The evidence was that the appellants and others robbed the complainant of the motor vehicle, Isuzu canter and cash Sh.800/=. They further admit that they possessed the fire arm.

While considering the request for the substitution we have considered the fact that the complainant was not at all injured during the course of the robbery. Further that the motor vehicle was at once recovered. In our considered view this is a proper case for the substitution. Miss Ambasi, State Counsel also agrees. The appellants had no previous conviction. Both were in remand for about six months. There is no remission for robbery sentence.

Order: We substitute the conviction against both appellants on the 1st count for Robbery, contrary to section 296(1), P.C. and set aside the death sentences. We sentence both appellants to four years imprisonment with effect from 27-5-1999 plus two strokes each. The convictions and sentences in default of the fines on the 2nd and 3rd counts respectively are upheld.

The 2nd appellant David Mukasa be repatriated to Uganda upon serving the sentence.

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

G.P. MBITO

JUDGE

V.V. PATEL

JUDGE