



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT MOMBASA
APPELLATE SIDE
CRIMINAL APPEAL NO.473 OF 1999

(From Original Conviction and Sentence in Criminal Case No.4075 of 1999
of the Chief Magistrate's Court at Mombasa – L. Achode, Mrs. – S.R.M.)

BONIFACE LUKOYE.....APPELLANT
=V E R S U S=
REPUBLIC.....RESPONDENT

J U D G M E N T

The Appellant was charged with robbery with violence contrary to Section 296(2) of the Penal Code. He pleaded guilty, was convicted and was sentenced to death. His appeal to this court is against that conviction and sentence. His main ground of appeal is that the Learned Trial Magistrate did not warn him on the seriousness of the charge. The State concedes to the appeal and rightly so. The record of the lower court shows that when the charge was read to the Appellant and all the ingredients replied: ***“It is true. We robbed the complainant of those items mentioned”.***

Then the prosecutor proceeded to state the facts which were admitted by the Appellant. The Trial Magistrate went ahead to convict and awarded the death sentence.

In a serious charge as this one, after the Accused has pleaded guilty, the Trial Magistrate should warn him of the consequences. That is the sentence is death before the facts are stated by the prosecutor. And if the Accused admits that he understands the consequences of the plea, then he can proceed. A plea of guilty in serious charges should not be admitted without warning. A conviction arising therefrom cannot stand.

Accordingly, we allow the appeal, quash the conviction and set aside the sentence of death awarded to the Appellant and order for a retrial before another Magistrate of competent jurisdiction.

That is the order of the court.

Dated and delivered at Mombasa this 9th day of October, 2001.

J.L.A. OSIEMO

JUDGE

G.A. OMWITSA

JUDGE