



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL APPEAL NO. 849 OF 1999**

**(FROM ORIGINAL CONVICTION AND SENTENCE IN CRIMINAL**

**CASE NO. 3772 OF 1998 OF THE SP MAGISTRATE'S COURT AT**

**MACHAKOS**

**VIRGINIA GATHONI MUKINYA.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

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

The learned counsel for the Republic concedes the appeal in respect of count one Robbery with violence c/s 296(2) of the Penal Code. With respect we agree. The contradictions that went through the evidence of pw1 weakened the prosecution case so much so that at the end of the trial, no basis for the conviction was left. Appeal on that count is therefore allowed. The appellant has abandoned her appeal on counts two and three and we believe rightly so. There was overwhelming evidence to sustain convictions on the same. We note that she was jailed for 3 years on each of the two counts. Sentences were to run concurrently. She had been treated as a first offender. She has served a substantial part of that sentence 29 months in all. We are of the view that, that is sufficient punishment. Accordingly, we make the following orders.

(a) Conviction and sentence of death set aside in respect of count one.

(b) Sentences in respect of counts two and three reduced to the period already served.

(c) Appellant to be released forthwith unless otherwise lawfully held.

**Dated and delivered at Nairobi this 21st day of November, 2001**

**MBOGHOLI MSAGHA**

**JUDGE**

**G. P. MBITO**

**JUDGE**