



**REPUBLIC OF KENYA**

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

**APPELLATE SIDE**

**HIGH COURT CRIMINAL APPEAL NO. 493 OF 1998**

**(From Original Conviction(s) and Sentence(s) in Criminal Case No. 103 of 1998 of The Snr. Resident magistrate's Court at Kangundo)**

**BENARD KHIO MUTUKU.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

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

The charge has been reduced to robbery C/s 296(1) of the Penal code. All the appellants concede the same. This court agrees as no injury was proved that falls under the provisions of section 296(1) of the Penal Code. On sentence, we bear in mind that all the appellants were first offenders. However, no recovery was made of the goods stolen. That notwithstanding the appellants have served about 3½ years in prison including time spent in remand during the trial. We are inclined to allow the appeal on the following terms;

- (a) Death sentences set aside
- (b) Sentences reduced to period already served.
- (c) Each appellant to suffer 2 strokes of the cane.
- (d) Each appellant to be released unless otherwise lawfully held.

**Dated and delivered at Nairobi this 19th day November, 2001**

**MBOGHOLI MSAGHA**

**JUDGE**

**G.P. MBITO**

**JUDGE**