

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
APPELLANT SIDE
CRIMINAL APPEAL NO. 203 of 2001

SAMINI SAMUEL NDUNDA APPELLANT
V E R S U S
REPUBLIC RESPONDENT

(From original conviction and sentence in Criminal Case no. 568
of 199 of the Senior Resident Magistrate Court at Kilifi – P.
Mutani)

J U D G M E N T

The appellant herein appeals against the sentence of 10 years and 10 strokes of the cane prescribed for robbery under Section 296 (1) of Penal Code. He pleaded guilty to robbing a tourist on 15.6.99 at about 5.30 p.m. at Mnarani Ruins. He had taken passport, camera, Binoculars, visa card, shs. 3000/- 200 US.dollars. The items were recovered by police . In mitigation the prosecutor informed the court that the appellant was a first offender. And he himself asked for leniency saying he was tempted by the devil. The maximum sentence imposed on this offence is imprisonment for 14 years together with corporal punishment not exceeding 28 strokes. For a first offender the punishment given is on the high side.

The State Counsel was of the same view saying it was a simple robbery. It is necessary for court to consider the length of sentence when dealing with first offenders so as to give them opportunity to reform.

I find that the trial magistrate did not consider the effect of the sentence on the appellant. I therefore find that the sentence imposed is harsh and excessive in the circumstances of this case.

I set aside the sentence of 10 years imprisonment and substitute the same with a term of 4 ½ years imprisonment with 4 strokes of the cane.

Dated this 6th November, 2001.

J. KHAMINWA

COMMISSIONER OF ASSIZE