



**REPUBLIC OF KENYA**

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

**CRIMINAL APPEAL NO.683 OF 1999**

**(From Original Conviction and Sentence in Criminal Case No.2284 of 1998**

**of the Principal Magistrate's Court at Machakos).**

**BONIFACE MUTUKU MAKANDA.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**ZAKAYO KASYOKI KASILI.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

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

We note that the appellant was injured on his head, nose and mouth. The injuries were minor and classified as harm.

We consider, bearing in mind the simple nature of this robbery, that this is a fit case for the substitution. The State counsel M/S Ambasi has no objection to it.

Both appellants had relevant P.C. Infact the 1st appellant Boniface had only one conviction and it was very old, being in March, 1995 for theft. We ignore it.

The 2nd appellant, Zakayo had 4 relevant previous convictions – three in 1996 and one in June, 1997. Both appellants were in remand for about ten months. There is no remission for robbery sentence. The 1st appellant Boniface is a cripple and unable to walk.

**ORDER:**

We substitute the conviction against each of the two appellants for Robbery, contrary to section 296(1), P.C. and set aside the death sentences. We sentence the 1st appellant, Boniface Mutuku to such period with effect from 30/6/99, which we entitle him to his release forthwith. We sentence the 2nd appellant, Zakayo Kasyoki to 4 years imprisonment with effect from 30/6/99 plus two strokes. Dated and delivered at Nairobi this 1st November, 2001.

**G.P. MBITO**

**JUDGE**

**V.V. PATEL**

**JUDGE**

