



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL DIVISION

CRIMINAL APPEAL NO.742 OF 1999

(From Original Conviction and Sentence in Criminal Case
No.1033 of 1998 of the Senior Principal Magistrate's Court at
Makadara).

JAMES KIMANI MUTHUITAAPPELLANT

VERSUS

REPUBLIC.....RESPONDENT

CONSOLIDATED WITH

CRIMINAL APPEAL NO.743 OF 1999

(From Original Conviction and Sentence in Criminal Case
No.1033 of 1998 of the Senior Principal Magistrate's Court at
Makadara).

FREDRICK KIBAYA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

CONSOLIDATED WITH

CRIMINAL APPEAL NO.744 OF 1999

(From Original Conviction and Sentence in Criminal Case
No.1033 of 1998 of the Senior Principal Magistrate's Court at
Makadara).

PATRICK MACHARIA KIMANI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

Criminal appeal Nos.742, 743 and 744 of 1999 are consolidated.

Mr. Wandugi the learned advocate the three appellants has, upon information, informed us that the appellants admit robbing the complainant as charged. He has requested us to substitute the convictions for Robbery, contrary to section 296(1), P.C. and consider probation for the appellants.

We have spoken to the appellants and they confirm robbing the complainant, and ask for the substitution.

The evidence was that the three appellants robbed the complainant of his Sh.1760/= and a wrist watch, total value bring Sh.3,500/=. We note that the complainant was not at all injured during the course of the robbery and was robbed of property worth only Sh.3,500/=.

It is our considered view that bearing in mind the simple nature of this robbery, this is a proper case for the substitution asked for. Indeed, the learned State Counsel Mr. Okello has no objection to it either.

We note that the three appellants were under the age of 18 years when they robbed the complainant on 6/9/97 and none of them had any previous conviction.

The appellants were in remand for about 19 months before they were convicted and sentenced on 4/7/99. The sentence being they be detained till the President's pleasure. Order:

We substitute the conviction of each of the three appellants for Robbery, contrary to section 296(1), P.C. and put aside the detention order.

We put each of the three appellants on 12 months probation from to-day.

Probation explained.

Dated and delivered at Nairobi this 1st day of November, 2001.

G.P. MBITO

JUDGE

V.V. PATEL

JUDGE