

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL APPEAL NO.533 OF 1999

(From Original Conviction and in Criminal Case No.2124 of 1997 of the Six Resident Magistrate's Court at Vihiga)

**JOHANA NABUTERE ESIVINDI.....APPELLANT
VERSUS
REPUBLIC.....RESPONDENT**

CONSOLIDATED WITH

CRIMINAL APPEAL NO.534 OF 1999

**HEZRON ANDAGE AMATAKA.....APPELLANT
VERSUS
REPUBLIC.....RESPONDENT**

J U D G M E N T

Criminal appeal Nos.533 and 534 of 1999 are consolidated. Both appellants now admit robbing the complainant as charged but have prayed for the substitution of the conviction for Robbery, contrary to section 296(1), P.C. The evidence in the court below was that on 25th September, 1997 the appellants, jointly with others robbed the complainant of his goods from his kiosk worth Sh.12,664/=. The complainant was injured on the head during the course of the robbery but there was no medical evidence on it as it must have been minor injury.

In our view this was not any serious type of robbery calling for death penalty. The Police should have brought the charge contrary to section 296(1), P.C. We are inclined to grant the request for the substitution. The learned lady State Counsel M/S Ambasi has no objection to it either. The appellants had past clean records and were in remand for about 18 months. There is no remission for robbery sentence.

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 both appellants to 3 ½ years imprisonment with effect from 13/4/99 plus two strokes each.

**G.P. MBITO
JUDGE**

1/11/01

**V.V. PATEL
JUDGE**

1/11/01