

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
MILIMANI LAW COURTS
HIGH COURT CRIMINAL APPEAL NO. 8 OF 1998

**(From Original Convictin(s and sentence(s) in criminal case no. 1998 of
1997 of The Chief Magistrate's Court at Nairobi)**

PATIRCK BUTLAI MURENGA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

These appellant was convicted of the offence of Robbery with violence c/s 296 (2) of the penal code and sentenced to death. He appealed. At the hearing of his appeal, the appellant agreed to the proposal by the learned counsel for the republic that he charge be substituted to fall under Section 296(1) of the Penal Code. We have also gone through the record and agree, with respect, that the appellant ought to have been charged with robbery c/s 296(1) of the Penal Code as the ingredients set out in the charge sheet were not proved by way of evidence before the learned trial magistrate. He charge is accordingly substituted and a verdict of guilty entered against the appellant under section 296(1) of the Penal Code aforesaid.

The foregoing being the case, the only issue now before us is that of sentence. The appellant was said to be a first offender. Since his arrest on 3rd August, 1997, he has remained in custody. This adds up to a period of 4 years and 4½ months. We consider this to be sufficient punishment in view of the circumstances of the offence. However, Corporal punishment and police supervision are mandatory provisions under sections 296(1) and 344 of the Criminal Procedure Code.

Accordingly, we allow the appeal by substituting the sentence of death and in place thereof a sentence of imprisonment equal to the period already served by the appellant. The appellant shall suffer (2) two strokes of the cane and thereafter released unless otherwise lawfully held. After his release, the appellant shall be under police supervision for a period of (5) five years.

Orders accordingly.

Dated and delivered at Nairobi this 20th day of December, 2001

MBOGHOLI MSAGHA

JUDGE