



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**APPELLATE SIDE**

**CRIMINAL APPEAL NO. 238 OF 2000**

**(From original conviction and sentence in criminal case No. 171 of 1998 of the Chief Magistrate's Court at Mombasa)**

**PAUL OGOLA PAUL.....APPELLANT**

**Versus**

**REPUBLIC .....RESPONDENT**

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

Appellant was charged with robbery with will violence contrary to section 296(2) of the Penal Code in that on 7/1/96 at Shauri yako village in Mombasa jointly with one not before the court being armed with dangerous weapon namely a knife robbed Margaret Iddi Mohamed of cash 520/- and at or before or immediately after such robbery used personal violence against her. The Senior Resident Magistrate Miss

Siganga heard the case and convicted the appellant of the reduced offence of robbery with violence contrary to section 296(1) of the Penal Code and sentenced him to 8 years imprisonment with 10 strokes of the cane on 22.7.96. He now appeals against this sentence only. However, the Senior State Counsel

Miss Kwena does not support this conviction. She submits that the evidence of PW 1 and PW 4 contradicted each other and yet it was the evidence of the two eye witnesses that formed the basis of the conviction. He says there is a variance between the charge and the evidence and more that the Learned Magistrate did attempt to shift burden of proof to the accused and that there is no proof to the required standard in the case.

I have looked at the proceedings and I agree with the Learned State Counsel that the charge was not proved, leave alone proof to the required standard. This conviction was unsafe. It is therefore quashed and sentence set aside. The appellant will be set free unless otherwise lawfully held.

**Delivered in open Court on 8th November, 2000.**

**A.I. HAYANGA**

**J U D G E**

