



**REPUBLIC OF KENYA**

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

**(CORAM: MAJANJA J.)**

**CRIMINAL APPEAL NO. 27,28 & 29 OF 2014**

**BETWEEN**

**SILVANUS OMWANDE.....1<sup>ST</sup> APPELLANT**

**PATRICK MOI ASEMBO.....2<sup>ND</sup> APPELLANT**

**FRANCIS JOMO PERL.....3<sup>RD</sup> APPELLANT**

**AND**

**REPUBLIC.....RESPONDENT**

*(Being an appeal from the original conviction and sentence of Hon. P.Achieng', PM delivered on 4<sup>th</sup> March 2014 at the Kakamega Chief Magistrate's Court in Criminal Case No. 1033 of 2012)*

**JUDGMENT**

1. The appellants **SILVANUS OMWANDE**, **PATRICK MOI ASEMBO** and **FRANCIS JOMO PERL** were convicted of the offence of preparation to commit a felony contrary to **section 308 (1)** of the **Penal Code (Chapter 63 of the Laws of Kenya)** and each sentenced to serve 7 years' imprisonment. They appealed against conviction and sentence.

2. At the trial, the appellant faced several counts of robbery with violence hence before the appeal commenced, the appellants' were duly warned that if indeed they were found guilty of the offence of robbery with violence, the state would seek enhancement of the sentence. The appellants abandoned their appeal conviction and each urged the court to be lenient on the sentence as they had served considerable time in prison.

3. As regards the sentence, **section 308(1)** of the **Penal Code** provides a minimum of 7 years' imprisonment and a maximum of 15 years' imprisonment. The court has no discretion to lower the sentence in the matter.

4. The appeal is dismissed.

**DATED and DELIVERED at KAKAMEGA this 4<sup>th</sup> day of April 2018.**

**D.S. MAJANJA**

**JUDGE**

Appellants in person.

Mr Ng'etich, Prosecution Counsel, instructed by the Office of the Director of Public Prosecutions for the respondent.