



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL DIVISION
CRIMINAL APPEAL NO. 1230 OF 1999

(From Original Conviction and Sentence in Criminal Case No.2335 of 1999
Senior Principal Magistrate's Court at Machakos).

DENNIS KILONZI MULATYA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

CONSOLIDATED WITH

CRIMINAL APPEAL NO.1231 OF 1999
(From Original Conviction and Sentence in Criminal Case No.2335 of 1999
Senior Principal Magistrate's Court at Machakos).

SAMMY MUSYOKA KILONZI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

CONSOLIDATED WITH

CRIMINAL APPEAL NO.1232 OF 1999
(From Original Conviction and Sentence in Criminal Case No.2335 of 1999
Senior Principal Magistrate's Court at Machakos).
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ISSAAC ISIKA MUSYOKA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

Criminal Appeal Nos. 1230, 1231 and 1232 of 1999 are consolidated. The other co-convict, Matetei Muasya Musili died in prison pending the hearing of his appeal No.1229/99 and the said appeal is now marked as abated.

The three appellants in court have now admitted that they robbed the two complainants counts as

charged but charged but have urged us to substitute their convictions for Robbery, contrary to section 296(1), P.C.

The evidence was that the appellants jointly with others, robbed the 1st complainant of property worth Sh.20,730/= and the 2nd complainant of the property worth Sh.21,000/= on the night of 16th/17th December, 1998.

It is clear from the testimonies of the 1st complainant (Martin) and his wife that both of them were injured during the cause of the robbery. However, their injuries were classified as harm.

The 2nd complainant was not injured at all. Some property of the two complainants was set on fire by the robbers.

Having considered the evidence we find this to be a suitable case for the substitution of the convictions for contrary to section 296(1), P.C.

The learned State Counsel M/S Ambasi has no objection to the substitution.

All the three appellants were first offenders. They were in remand for about one year. There is no remission for robbery sentence.

ORDER:

We substitute the convictions against the three appellants on both counts for Robbery, contrary to section 296(1), P.C. and set aside the death sentences. We sentence each of the three appellants imprisonment to run concurrently with effect from 8th November, 1999 plus two strokes on each count.

Dated and delivered at Nairobi this 1st November, 1999.

G.P. MBITO

JUDGE

V.V. PATEL

JUDGE