

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL APPEAL NO. 1524 OF 1992

JOSEPH KARAGO NGONYOAPPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The appellant was convicted of robbery with violence contrary to section 296 (2) P.C. and sentenced to death.

The evidence was that on the day in question as the complainant reached his house at about 8:15 p.m the appellant and two others attacked him. One of them put his hand into his pocket and removed Shs. 700/- from it. According to him the appellant cut him with a knife. The complainant screamed. The appellant's cronies made off but the complainant grabbed the appellant. Assistance soon was there in answer to the screams. Some so called well known mob justice was dished out upon the appellant who was later handed over to the police.

Mr. Mukuna, the learned advocate for the appellant upon instructions went on to say that the appellant took part in the robbery. Adding that the appellant in fact was not the one who cut the complainant but one of his cronies did so, the learned advocate is saying here or is taken to mean as saying that the appellant's role in this robbery of Shs. 700/- was very very minor indeed. According to him the appellant's companion, who escaped with the 3rd one, cut the complainant without the appellant's knowledge.

Mr. Mukuna went on to point out that in any case, the injury received by the complainant was of a very minor nature and the doctor classified it as mere harm.

The learned counsel has pleaded with the court to substitute the conviction for robbery contrary to section 296(1) P.C.

I have considered the entire evidence and the submissions so very ably advanced by the appellant's counsel. The learned State Counsel, Mrs. Ondieki supports the conviction.

Bearing in mind the evidence it is clear that this was one of those minor robberies with a small amount taken away with little threat or violence. It is my considered view that the Police should have used the discretion and charged the appellant with robbery contrary to section 296(1), P.C. indeed if the police wanted to bring the charge contrary to section 296(2) to get the death sentence against this poor little soul for what he did, it was their duty to forward the police file to the A.G. for this opinion on it. Had they done so, I remain convinced that the A.G. in his full wisdom would have prevented the charge contrary to section 296 (2) and advised the police to go for S. 296(1).

In the circumstances of the nature of the robbery I consider this to be a fit and proper case for substituting, without doing much damage to principles involved in doing so, the conviction for simple robbery, contrary to section 296(1), P.C. and I hereby do so. I set aside the death sentence.

The appellant is a young offender about 20 years old. He is extremely remorseful. He was arrested on 17th May 1992 the day of the robbery. He remained in remand until 1st September, 1992 when the death sentence was passed.

I sentence the appellant to six years imprisonment with effect from 1st September, 1992

Dated and delivered at Nairobi this 22nd day of March, 1995

V.V PATEL

JUDGE