



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL APPEAL NO. 1189 OF 2001

**(From Original Conviction and sentence in Criminal Case No. 3829 of 2001
of the senior Principal magistrate's Court at Kibera)**

ALFRED MULIRA JUMA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

The appellant was convicted of the offence of Robbery with violence c/s 296(2) of The Penal Code and sentenced to death. This appeal arises from the said conviction.

At the hearing of this appeal, the appellant asked for substitution of the conviction to fall under section 296(1) of the Penal Code. The learned counsel for the Republic had no objection thereto but asked the court to take into consideration the conduct of the appellant in betraying the trust to his employer. In effect, the appellant was admitting the offence of Robbery C/s 296(1) of the Penal Code.

On our evaluation of the evidence on record, we believe substitution is warranted. Accordingly, we set aside the conviction under section 296(2) of the Penal Code and in place thereof enter a conviction under section 296(1) of the Penal Code.

The appellant was first brought to court on 22nd June, 2001. He has been in custody for just about two years. His records were not available when he was sentenced on 13th November, 2001 and so he was treated as a first offender.

The appellant was employed as a watchman. He betrayed his employer. The goods stolen were said to be worth kshs. 1.7 million. Nothing was recovered. We are of the view that a stiff sentence is called for. We order that the appellant shall serve seven years imprisonment from the date of conviction. He shall also receive four strokes of the cane. After release from prison, he shall be under police supervision for five years. Orders accordingly.

Right of appeal explained.

Dated and delivered at Nairobi this 4th day of June, 2003.

MBOGHOLI MSAGHA

JUDGE

R. M. MUTITU

JUDGE



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