

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL APPEAL NO. 1214 OF 1998

(From Original Conviction and Sentence in Criminal Case no. 1133 of SPM
KAKAMEGA)

ERNEST OTUYA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

With the agreement of the Republic the conviction of the appellant has been substituted to fall under Section 296(1) of the Penal Code. The effect thereof is that the conviction under section 296(2) and the death sentence are hereby set aside.

The only issue before us now is that of sentence. The appellant was arrested on 2nd July, 1996 and has remained in custody ever since. This period adds up to 5 years and 6 months.

As at the time of conviction, the appellant held five previous convictions four of which were relevant to the charge upon which he was convicted. He also admitted that he was serving sentence for stock theft related offence.

The appellant has lived a life of crime and it would appear the sentences that have been imposed on him before have not had any deterring effect on him. There is not a guarantee that he shall not find himself in trouble with law as he appears to be committed to the life he has led so far.

We have taken into consideration all the material before us. The appellant shall serve 7 years imprisonment. The effective date shall be the date of conviction for the present offence.

The appellant shall also suffer four(4) strokes of the cane. After his release, he shall be subject to police supervision for a period of five(5) years.

Orders accordingly.

Dated at Nairobi this 28th day of December 2001.

MBOGHOLI MSAGHA

JUDGE

28/12/2001

G.P. MBITO

JUDGE