

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

CRIMINAL APPEAL NO. 90 OF 2018.

(Being an appeal arising from Kitale Chief Magistrate's Court Criminal Case No. 1303 of 2016 delivered by Hon. P.C. Biwott SPM on 29th November, 2016)

DAVID KANYI WANGOI.....APPELLANT

VERSES

REPUBLIC.....RESPONDENT

JUDGEMENT.

1. The Appellant was charged and convicted for the offence of **robbery with violence contrary to Section 296(2) of the Penal Code**. The particulars of the charge were that **on 12th March 2016 at Kesogon village within Trans-Nzoia County being armed with a dangerous weapon namely a piece of timber robbed Paul Kur Ring, cash of Kshs. 73,000, one Samsung Galaxy Tab valued at Kshs70,000, Toshiba Lap Top worth Kshs. 45,000 all valued at Kshs. 148,000 and immediately before the time of such robbery used actual violence to the said Paul Kur Ring.**
2. He was convicted after full trial and sentenced to 7 year's imprisonment. While the appeal was pending the appellant did an application seeking that the court does consider that he has served sufficient time in prison and he be allowed to serve the remainder of the term under probation.
3. The court takes notice of the fact that the Appellant was generally in custody from 21st March 2016 and thereafter. To date he has been in jail for close to 5 years. The Appellant has managed to undertake some religious studies which should hopefully be able to help him.
4. The court notes that the probation report dated 15th October 2020 is not favourable to the appellant. Whereas that is true, it however reflects on the past history of the appellant. For now, the same office needs to guide and steady him into moral uprightness. He will not be in prison forever.
5. The appeal is not meritorious in any case the court having gone through the proceedings. The appellant simply attacked his neighbour with the aim of stealing from him which he successfully did. Although the learned state counsel submitted that the charge should have been reduced to one of assault, the ingredients of robbery with violence were proved. The trial court found it right and this court would not disturb it.
6. Consequently, the Appellant is hereby set free unless lawfully held. He shall however serve a probation period for one year from the date herein at the relevant Probation Office.

Dated, Signed and Delivered at Kitale this 29th day of October 2020.

H. K. CHEMITEI.

JUDGE

29/10/2020