



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT BUNGOMA**

**MISC. CRIMINAL APPLICATION NO. 53 OF 2018**

**SOLOMON WAFULA KHISA.....APPLICANT**

**VERSUS.**

**REPUBLIC.....RESPONDENT**

*[An appeal from Conviction and Sentence In Original Bungoma CMCR. No. 311/2014*

*delivered on 2/4/2015 by Hon. R.B. Ngetich – Chief Magistrate]*

**RULING.**

The appellant Solomon Wafula Khisa was charged with offence of robbery with violence Contrary Section 296(2) of the Penal Code. He also faced an alternative charge of handling stolen property Contrary to Section 322(2) of the Penal Code. The particulars of the offence were that on the 11<sup>th</sup> day of February, 2014 at Bungoma Township within Bungoma County, otherwise that in the Course of stealing dishonestly detained one mobile phone make Nokia Asha RM 761 IMEI No.356354/05/131486/3 valued at Kshs.6,000/= knowing or having reason to believe it to be stolen property.

After full hearing, the learned trial magistrate found appellant guilty of the alternative charge of handling stolen property and sentenced him to serve five (5) years imprisonment. Dissatisfied with conviction and sentenced the appellant presented this appeal. The appellant when he appeared before this court on 25.10.2018 informed court that he was not challenging the conviction but only asked that this court review the sentence of five (5) years imprisonment imposed. He submitted that he has a family which depends on him and has learnt valuable skills in prison.

Mr. Oimbo for the state opposed the application for review of sentence. He submitted that the offence appellant was charged with, handling stolen property Contrary to Section 322(2) of the Penal Code attracted a maximum sentence of 14 years but appellant was sentenced to five (5) years imprisonment, which sentence was lenient.

The appellant was convicted and sentenced for the offence of handling stolen property Contrary to Section 322(2) of the Penal Code. Section 322(2) Penal Code provides; ***A person who handles stolen goods is guilty of a felony and is liable to imprisonment with hard labour of a term not exceeding fourteen years.***

The section under which appellant was convicted attracts a maximum sentence of 14 years. He was sentenced to serve (5) years Imprisonment being almost 1/3 of the maximum sentence. The court considered his mitigation which he informed the court on 2/4/2015. The issue of sentencing is at the discretion of the trial court. The appellate Court can only interfere with the sentence if it is demonstrated that the trial court considered extraneous factors or did not consider relevant factors; or that the sentence is so excessive as to amount to a mis-directions on objectives of sentencing.

In this case the appellant was sentenced to almost only 1/3 of the maximum imprisonment term. I do not find the sentence to be excessive. This appeal is therefore dismissed.

**Dated at Bungoma this 24<sup>th</sup> day of January, 2019.**

**S.N. RIECHI**

**JUDGE.**