

IN THE HIGH COURT AT KIAMBU

CRIMINAL APPEAL NO. 12 OF 2018

BETWEEN

GERALD GITARI MUGO..... APPELLANT

AND

REPUBLIC..... RESPONDENT

(Being an appeal against the original conviction and sentence dated 22nd December 2015 in Criminal Case No. 2690 of 2014 at Thika Chief Magistrates Court before Hon. A. Lorot, PM)

JUDGMENT

1. Although the appellant, **GERALD GITARI MUGO**, was charged under the offence of robbery with violence contrary to **section 296(2)** of the *Penal Code (Chapter 63 of the Laws of Kenya)*, he was convicted of the offence of handling stolen goods contrary to **section 322(2)** of the *Penal Code*. He was sentenced to serve 6 years' imprisonment.
2. The appellant appeals against conviction and sentence. At the hearing of this appeal he prayed for the court to reconsider the sentence as he has been in custody for a long time and has reformed.
3. Counsel for the respondent submitted that the sentence was appropriate in light of circumstances of the case as he was found with recently stolen goods immediately after the robbery incident.
4. The imposition of a sentence is a matter for the trial court's discretion and for the appellate court to interfere with a sentence, it must be shown that the trial court failed to take into account relevant factors or took into account irrelevant facts. The appellant may also demonstrate that the trial court erred on a point of law or principal or that in the circumstances the sentence was unduly harsh and excessive.
5. I cannot say that the sentence was unduly harsh as the appellant was caught immediately after the incident with the complainant's shoes and although he was a first offender, the sentencing notes showed that he did not offer any mitigation. Given the maximum sentence under **section 322(1)** of the *Penal Code* is 14 years' imprisonment, I see no basis upon which I can intervene in an otherwise lawful and reasonable sentence.
6. The appeal is dismissed.

DATED and DELIVERED at KIAMBU this 14th day of February 2018.

D.S. MAJANJA

JUDGE

Appellant in person.

Mr Kinyanjui, Prosecution Counsel, instructed by the Director of Public Prosecutions for the respondent.