REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUSIA

CRIMINAL APPEAL NO. 4 OF 2015

DENNIS CHEGE OKUMU....................................APPELLANT

VERSUS

REPUBLIC..RESPONDENT

(From the original conviction and sentence in criminal case

No. 798 of 2014 of the Chief Magistrate's Court at Busia

by M. Munyekenye– Senior Resident Magistrate)

JUDGMENT

1. The appellant, **DENNIS CHEGE OKUMU,** was convicted in two counts of handling stolen goods contrary to section 322 (2) of the Penal Code.

2. The particulars of the offences were that on 14th April 2014 at **BUSIJO** village, **SAMIA** District of **BUSIA** County, otherwise than in the course of stealing dishonestly retained one T.V set, 2 packets of maize flour and bar soap all valued at Kshs. 7700/= knowing or having reasons believe them to be stolen goods the property of **EVANS PAMBA NALWENGE**. In the second alternative count the facts were that on the same day and place, otherwise than in the course of stealing dishonestly retained one printer machine and one electric iron box all valued at Kshs. 11400/= knowing or having reasons believe them to be stolen goods the property of **EMMANUEL MAKOKHA SIKHILA**.

3. He was convicted after trial and sentenced to seven years imprisonment on each count and the sentences were ordered to run concurrently.

4. He now appeals against the sentence.

5. The state opposed the appeal through Mr. Omayo, the learned counsel.

6. The facts of the prosecution case were briefly as follows:

After a spate burglaries and shop breakings, the appellant was found in possession of some of the items stolen from therein. He was tried and convicted in the alternative counts.

7. Section 322(2) of the Penal Code provides as follows:

> ***A person who handles stolen goods is guilty of a felony and is liable to imprisonment with hard labour for a term not exceeding fourteen years.***

8. An appellate court would interfere with the sentence of the trial court only where there exists, to a sufficient extent, circumstances entitling it to vary the order of the trial court. These circumstances were well illustrated in the case of **NELSON vs. REPUBLIC [1970] E.A. 599**, as follows:

> ***The principles upon which an appellate court will act in exercising its jurisdiction to review sentences are fairly established. The court does not alter a sentence on the mere ground that if the members of the court had been trying the appellant, they might have passed a somewhat different sentence and it will not ordinarily interfere with the discretion exercised by a trial Judge unless as was said in JAMES Vs. REX (1950), 18 EACA 147, it is evident that the Judge has acted upon some wrong principle or***

overlooked some material factor. To this, we would also add a third criterion, namely, that the sentence is manifestly excessive in view of the circumstances of the case. R Vs. SHERSHEWSITY (1912) C.CA 28 T.LR 364.

9. In the instant case the appellant was a first offender. This coupled with his mitigation, the sentence meted by the learned trial magistrate was manifestly harsh in the circumstances of this case. I am persuaded to interfere with the sentence. I set aside the sentence of seven years imprisonment on each count and substitute it with a sentence of three years imprisonment on each count. The sentence to run concurrently from when the sentence was imposed by the learned trial magistrate. His appeal succeeds to that extent.

DELIVERED and SIGNED at BUSIA this 15th day of March, 2018

KIARIE WAWERU KIARIE

JUDGE