



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NANYUKI
CRIMINAL APPEAL NO. 37 OF 2016
DENNIS MUTHEEAPPELLANT
Versus
REPUBLIC.....RESPONDENT

(Being an appeal from the original conviction and sentence by Hon. F W Macharia –Principal Magistrate dated 17th April 2015 in Nanyuki Chief Magistrate Court Criminal Case No. 592 of 2013)

JUDGMENT

1. **DENNIS MUTHEE** has filed this appeal against his 4 years jail sentence on being convicted of the **offence handling stolen goods Contrary to Section 322 (2) of the Penal Code.**
2. The appellant relied on two grounds, in his appeal. He submitted that he was now reformed and that he has learnt a trade in metal work which he wishes to make use of in the community.
3. I will be guided, in my consideration of this appeal by the persuasive case of **Papua New Guinea** namely **ACTING PUBLIC PROSECUTOR =VR= KONIS HAHA [1981] PNGLR 205** where it was stated:

“...this court does not have an unfettered discretion to vary the sentence appealed against and will only do so where it is clearly shown that the trial Judge has fallen into error in the exercise of his discretion”.
4. Another useful case to consider is **CRASSEN =V= THE KING [1936]HCA 42** the court held:

“The jurisdiction to revise such discretion must be exercised in accordance with recognised principles. It is not enough that the member of the court would themselves have imposed a less or different sentence or that they think the sentence over-severe. There must be some reason for regarding the discretion confided to the court of first instance as improperly exercised”.
5. The limits set out in the above cases are the ones I should operate within, in this appeal.
6. On the trial court convicting the appellant of the offence of handling stolen goods the prosecution informed the trial court that the appellant had previously been convicted of the offence of stock theft whereby he was sentence to three years imprisonment and was also convict of the offence of burglary and was sentenced to two years imprisonment. The trial court, therefore, as it considered the sentence of the offence of handling stolen goods it was dealing with one who had previous convictions.
7. The sentence set out under **Section 322 (2) of the Penal Code** is one not exceeding fourteen years

imprisonment. The appellant was sentenced to four years imprisonment. In my view the trial court did not fall in error in exercising its discretion when it sentence the appellant to four years imprisonment. There is therefore no reason to interfere with the trial court's exercise of its discretion in sentencing the appellant.

8. For the above reason the appellant's appeal against sentence is dismissed. The trial court's sentence is confirmed.

Dated and Delivered at Nanyuki this 26th JULY 2017

MARY KASANGO

JUDGE

Coram

Before Justice Mary Kasango

Court Assistant: Njue/Maria Stella

Appellant: Dennis Muthee

For state:

Language:

COURT

Judgment delivered in open court

MARY KASANGO

JUDGE