

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL REVISION NO. 79 OF 2014

PAUL MASAKU MAKAU.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Applicant herein was charged with robbery with violence contrary to **Section 295** as read with **Section 296(2) of the Penal Code**. In the alternative, he was charged with handling stolen property contrary to **Section 322(a)(2) of the Penal Code**. He was found guilty and convicted on the alternative charge and sentenced to serve 8 years imprisonment. The facts of the alternative charge for which he was convicted were that on 25th April, 2013, at Homeland along Thika Road within Nairobi County jointly with others not before the court, otherwise than in the course of stealing, dishonestly retained motor vehicle KBT 855G, Toyota NZE valued at Kshs.1.2 million, the property of Edward Odongo Nawa knowing or having reason to believe it to be stolen property.

The lower court file in Milimani Criminal Case No. 582 of 2013 was forwarded to this court so that this court pursuant to **Section 362 of the Criminal Procedure Code** can satisfy itself as to the correctness, illegality or regularity of the sentence passed. By the Applicant's Chambers Summons filed on 29th September, 2014 has sought a revision of the sentence. He claims that the sentence was harsh and excessive as he was a first offender, that the trial took one year during which period he was in custody, that his health in prison had deteriorated and that he was the sole breadwinner to five school going children.

Learned State Counsel Ms. Akuja opposed the application. She submitted that the 8 years jail term was reasonable as the law provided for a possible 14 years imprisonment. In any case, the offence for which the Applicant was convicted was serious as he was found in possession of a stolen motor vehicle.

I have considered the application and the respective submissions and I taken the following view of the same. The sentence imposed was legal as **Section 322(2)** provides that a person who handles stolen goods if convicted is found guilty of a felony and is liable to imprisonment with hard labour for a term not exceeding 14 years. However, the Applicant was a first offender and taking into account that he did not afford bail/bond, he remained in custody for a period of exactly one year before the conviction. In that case, I would take into consideration that cumulatively, if the Applicant were to serve the 8 years jail term, he would be in custody for 9 years. For purposes of facts, he was charged on 29th April, 2013 and was sentenced on 29th April, 2014. I acknowledge that the offence is serious but nevertheless, a first offender should always be given an opportunity to reflect on the wrong he has committed. The sentence imposed therefore should not be so harsh as would harden the offender as opposed to serving as a deterrent measure.

I am aware that the Applicant is currently facing another criminal charge in Makadara Cr. Case No. 1779 of 2009 in which he is charged with robbery with violence. The trial is at defence hearing. I note this from a knowledge point of view as I dealt with the matter at revision level vide Misc. Cr. Application No. 206 of 2016. However, an accused is deemed innocent unless otherwise proved. The charge in criminal case No. 1779 of 2009 cannot and should not influence the revision of the sentence in the current

application. In the circumstances, I set aside the 8 years jail term and substitute the same with an order that the Applicant shall serve five years imprisonment from the date of sentencing. In tabulating the penalty, the period the Applicant was in remand shall be considered. Effectively, he shall serve a jail term of four years from 29th April, 2014. It is so ordered.

DATED and DELIVERED this 21st day of NOVEMBER, 2016.

G.W. NGENYE-MACHARIA

JUDGE

In the presence of:

- 1. Applicant in person*
- 2. Ms. Akuja for the Respondent.*