



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL DIVISION**

**CRIMINAL APPEAL NO.140 OF 2012**

*(An Appeal arising out of the conviction and sentence of Hon. M. Muya – CM delivered on 3<sup>rd</sup> July, 2011 in Makadara CM. CR. Case No.1413 of 2010)*

**DANIEL MBUGUA KURERI.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

The Appellant, Daniel Mbugua Kureri was charged with others, with the offence of **robbery with violence** contrary to **Section 296(2)** of the **Penal Code**. The particulars of the offence were that on 30<sup>th</sup> March 2010 at Mlolongo in Nairobi, the Appellant, jointly with others not before court, robbed Benta Kavutha Mutua of Kshs.450,000/- and at or immediately before or immediately after the time of such robbery used actual violence to the said Benta Kavutha Mutua. When the Appellant was arraigned before the trial magistrate's court, he pleaded not guilty to the charge. After full trial, the Appellant was convicted of the lesser but cognate offence of **robbery with violence** contrary to **Section 296(1)** of the **Penal Code**. He was sentenced to serve seven (7) years imprisonment. The Appellant was aggrieved by his conviction and sentence and duly filed an appeal to this court.

Although the Appellant challenged both his conviction and sentence in his petition of appeal, during the hearing of the appeal, the Appellant abandoned his appeal on conviction. Instead the Appellant pleaded with the court to reduce the custodial term that was imposed on him. He told the court that he had served five (5) years of the sentence that was imposed on him. He had kidney stones. He pleaded with the court to give him another chance in life. He urged the court to take into consideration the fact that he was in remand custody for a period of one year and two months before he was convicted. Mr. Mureithi for the State left the issue of the sentence to the discretion of the court.

When the trial magistrate sentenced the Appellant to serve the custodial sentence, he was exercising judicial discretion. This court can only interfere with such exercise of discretion if it is established either that the sentence was too harsh or too lenient in the circumstances. The court will also interfere with the imposition of the custodial sentence if it is established that the trial magistrate applied the wrong principles of the law in sentencing the Appellant. In the present appeal, the Appellant's sentence was legal. This court however notes that the Appellant has served a substantial part of the sentence that was imposed on him. He is remorseful. In total, taking into account the period that the Appellant was in remand custody awaiting trial, the Appellant has been in prison for a period of more than six (6) years. We are of the view that the Appellant has been sufficiently punished. He has learnt his lesson. The State did not object to this court exercising its discretion in favour of the Appellant.

The appeal on sentence shall be allowed as a result of which the custodial sentence of the Appellant is commuted to the period already served. The Appellant is ordered set at liberty forthwith unless otherwise lawfully held. It is so ordered.

**DATED AT NAIROBI THIS 23<sup>RD</sup> DAY OF JULY 2015**

**L. KIMARU**

**G.W. NGENYE – MACHARIA**

**JUDGE**

**JUDGE**