



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL APPEAL NO. 60 OF 2011

(From original conviction and sentence in Criminal Case No. 1273 of 2009 of the Chief Magistrate's Court at Machakos, J. M. Munguti – SRM)

STEPHEN KAITHI NATHAN.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

1. The Appellant, Stephen Kaithi Nathan was charged with the offence of robbery with violence contrary to Section 296(2) of the Penal Code.

The particulars of offence are that on the 5th day of January 2007 at Muthesya Location in Yatta District, within the Eastern Province, jointly with others not before the court while armed with dangerous weapons namely pangas, simis, and rungus robbed Paul Somba Mwanthi of a mobile phone make Nokia 1100, a brief case, one bag, school uniforms and 2 kgs of sugar all valued at Ksh 12,355/= and at or immediately before or immediately after the time of such robbery used actual violence on the said Paul Somba Mwanthi.

2. In the alternative the Appellant was charged with the offence of handling stolen goods, contrary to Section 322(2) of the Penal Code.

The particulars of offence are that on the 8th day of January 2007 at Kawethei Village, in Ndithini Location, in Machakos District within the Eastern Province, otherwise than in the course of stealing, dishonestly received or retained one small bag, 2 file covers, one diary book of 2007, 2 receipt books and one mobile phone make Nokia 1100 knowing or having reason to believe them to be stolen goods or unlawfully obtained.

3. The Appellant pleaded not guilty. After a full trial, the Appellant was convicted in the alternative count of handling stolen goods and sentenced to serve ten (10) years imprisonment. The Appellant was dissatisfied with the sentence and appealed to this court on the following grounds:
 - a. That the Appellant is a first offender.
 - b. That the Appellant is remorseful and prays for leniency.
 - c. That the Appellant has reformed.

- d. That the period spent in custody should be taken into consideration.
 - e. That the Appellant takes care of his aged parents.
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- 4. The appeal is opposed. The learned counsel for the State submitted that the sentence of ten (10) years is within the law.
 - 5. I have taken into account the stolen goods and the period served. The Appellant was sentenced on 14th January, 2011. The Appellant was arraigned in court on 8th May, 2009 and was in custody throughout the trial. Consequently, I reduce the sentence to the period already served. The Appellant is at liberty unless otherwise lawfully held.

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B. THURANIRA JADEN

Dated and delivered at Machakos this 29th day of October, **2015**

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B. THURANIRA JADEN

JUDGE