



**REPUBLIC OF KENYA**

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

**CRIMINAL APPEAL NO. 437 of 2009**

JOSEPH PETER NGALASON ..... APPLICANT

VERSUS

REPUBLIC .....RESPONDENT

*(From Original Judgment in Criminal Case Number 1512 Of 2009 In The Chief Magistrate's Court at Kiambu Before A. Ongeru (PM) On 17<sup>th</sup> April, 2009)*

**JUDGMENT**

The appellant Joseph Peter Ngalason was charged with the offence of robbery with violence contrary to Section 296(2) Penal Code. In the alternative he was charged with the offence of handling stolen goods contrary to Section 322 (2) of the Penal Code. He denied both offences but after a full trial he was acquitted of the main count but convicted of the alternative count and sentenced to serve fourteen years imprisonment with hard labour.

He was aggrieved by the said conviction and sentence and therefore lodged this appeal. At the hearing of this appeal, he abandoned or withdrew his appeal against conviction and prosecuted the appeal against sentence only. The appeal is opposed by the state.

In his submissions he has stated that he was a first offender and deeply remorseful of his act. Further, for the period he has spent in prison, he has learnt the value of honesty and hard work. He has also gone through rehabilitation both spiritually and mentally, and has undertaken various courses to enable him make a contribution to the society and his dependants. Although before the learned trial magistrate he had nothing to say in mitigation, in his submissions before me he has stated that prior to his arrest he was married with one child and his family depended on him entirely.

I have given consideration to the attendant facts and circumstances of the case. The subject matter said to have been in the possession of the appellant at the time of his arrest was a Nokia mobile phone valued at Kshs. 4,300/=. The phone was recovered in working condition. The sentence provided for this offence on conviction is imprisonment with hard labour for a term not exceeding fourteen years.

The appellant was a first offender. In the note on sentence, the learned trial magistrate commented that the offence is serious considering that the complainant who sustained grievous injuries almost lost her life during the robbery. That comment was prejudicial to the appellant considering that he had been acquitted of the robbery charge.

Having been a first offender, the sentence imposed which was the maximum provided under the law was, in my view harsh and excessive. The appellant was arrested on 13<sup>th</sup> August, 2008 and arraigned before the court on 25<sup>th</sup> August, 2008. He was convicted and sentenced on 17<sup>th</sup> April, 2009. For eight and half months he was in custody while undergoing trial. This period ought to have been taken into account under Section 333(2) of the Criminal Procedure Code. He has served five years in prison out of the fourteen years imprisonment imposed by the learned trial magistrate. I am of the view that the period served is sufficient punishment for the offence upon which he was convicted.

Accordingly, I allow the appeal on sentence by reducing the sentence of fourteen years and hard labour to the period already served, such that the appellant shall be released from prison forthwith unless otherwise

lawfully held.

Orders accordingly.

**SIGNED DATED and DELIVERED** in court this **28<sup>th</sup>** day of May **2014**.

**A.MBOGHOLI MSAGHA**

**JUDGE**