



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
CRIMINAL CASE NO. 6 OF 2012

LESIT, J.

FRANKLINE MUTWIRI KINJA.....APPELLANT

V E R S U S

REPUBLIC.....RESPONDENT

(An appeal from the Judgment and sentence in Marimanti Criminal Case Number 230 of 2010)

JUDGMENT

1. The Appellant **FRANKLINE MUTWIRI KINJA** was convicted of the alternative count of handling stolen property contrary to section 322(2) of the Penal Code. He was sentenced to 8 years imprisonment. Being aggrieved by the conviction and sentence, the Appellant filed this appeal.
2. When the appeal came up for hearing the Appellant abandoned his appeal against the conviction. He appealed only against the sentence. He relied on the grounds in his petition of appeal. None of the grounds referred to the issues of sentence. However I will deal with his pleas for reduction of sentence.
3. The state through Mr. Edwin Mulochi Prosecution Counsel left the matter to the court to decide.
4. The Appellant was convicted of handling one mattress, three blankets, one bed cover, one stove and one hurricane lamp. Knowing or having reason to believe the same to be stolen or unlawfully obtained.
5. Before sentence both the prosecution and the Appellant did not say anything in mitigation. On the other hand the learned trial magistrate did not say anything before sentence.
6. Having said nothing this court is unable to know what the learned trial magistrate considered before sentence. It is also difficult to tell on what basis the sentence imposed was arrived at. It will not be farfetched to conclude that the exercise of discretion before was passed sentence was arbitrary as nothing on record proves the contrary.
7. The Appellant should have been treated as a first offender since the prosecution offered no

previous record before sentence. Items found with the Appellant are not of much value as their value was not indicated. They were simple household goods. The Appellant is a young man. Eight years imprisonment in the circumstances was harsh and excessive.

8. I have come to the conclusion that the Appellant's appeal against sentence should succeed. Accordingly I allow the appeal against sentence, set aside the sentence of 8 years imprisonment and in substitution sentence the Appellant to 3 years imprisonment from the date of sentence in the lower court.

9. Those are my orders.

DATED SIGNED AND DELIVERED THIS 22ND DAY OF JULY, 2014

LESIIT J.

JUDGE.