



**REPUBLIC OF KENYA**

**High Court at Meru**

**Criminal Appeal 42 of 2009**

**MARK NDEREVA ELIUD .....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGEMENT**

The Appellant was charged before Chief Magistrate court Meru with another with one count of robbery with violence contrary to section 296(2) of the Penal Code and an alternative count of handling stolen goods contrary to section 322(2) of the Penal Code. The offences were allegedly committed on the 9<sup>th</sup> October, 2002. The Appellant was the only one convicted and was convicted of the main count of robbery which was however reduced to robbery under section 296(1) of the Penal Code. He was sentenced to 14 years imprisonment on the 5<sup>th</sup> October 2006.

The Appellant was aggrieved by both the conviction and sentence and therefore filed this appeal.

When we came for the hearing of his appeal the Appellant informed the court that he was not pursuing his appeal against the conviction but only against sentence. He urged the court to reduce his sentence bearing in mind that he has served 7 years of that sentence.

The state was represented by Miss Murithi learned State Counsel. Miss Murithi opposed the Appeal and submitted that the sentence was right and that it should not be considered downward.

I have considered the Appellants Appeal against the sentence. I noted that the Appellant had been charged with capital robbery but after the learned trial magistrate considered the evidence she reduced the charge to simple robbery contrary to section 296(1) and proceeded to sentence the appellant to 14 years imprisonment. Section 296(1) provides

**“Any person who commits the felony of robbery is liable to imprisonment for 14 years.”**

The learned trial magistrate imposed the maximum sentence for this offence. I noted from the proceedings that the prosecution treated him as a first offender. The prosecutor also requested the court to hand down a stiff sentence against the appellant for reason the offence was serious.

The appellant has served 6 ½ years since his imprisonment. I considered that most of the stolen items in this case were recovered. Having been a first offender, it was rather harsh and excessive for the learned trial magistrate to impose the maximum sentence for the offence. The appellant deserve to be given some benefit for being a first offender especially since there were no aggravating circumstances in the manner in which the offence was executed.

I therefore find the sentence was harsh and excessive and accordingly allow the appeal against the sentence by reducing it from 14 years imprisonment to the period already served.

**DATED SIGNED AND DELIVERED THIS 18<sup>TH</sup> DAY OF APRIL 2013**

**J. LESIIT  
JUDGE.**