



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL APPEAL NO.238 OF 2011

(consolidated with HCRA. NO.239 of 2011)

JOHN MWANGI WANGECI 1ST APPELLANT

JOHN NJARAMBA NDIRITU 2ND APPELLANT

VERSUS

REPUBLIC RESPONDENT

(From original conviction and sentence in SPMCR Case No.871 of 2011 – a decision by A.B. Mongare, Senior Resident Magistrate, Nyahururu dated 14th September, 2011)

JUDGMENT

JOHN MWANGI WANGECI alias Junior (1st appellant) and **JOHN NJARAMBA NDIRITU** (2nd appellant) were jointly charged before the trial magistrate with various offences, some committed jointly and others separately.

In the charges of robbery where they were jointly charged, both were acquitted. 1st appellant was convicted on a charge of being in possession of an imitation firearm contrary to **Section 21(1)** as read with **sub-section 21(2)** of the **Firearms Act Cap 114 Laws of Kenya**. He had been found in possession of an imitation firearm resembling an MP5. He was sentenced to 8 years imprisonment.

The 2nd appellant was convicted on a charge of handling stolen goods contrary to **Section 322 of the Penal Code Cap 63, Laws of Kenya** and sentenced to serve 8 years imprisonment. The trial magistrate noted that the appellant got off the hook on the charge of robbery purely on technicalities and was satisfied that he too deserved a deterrent sentence.

At the hearing of the appeal, the appellants abandoned the appeal on conviction and only prosecuted their appeal on sentence.

In their oral submissions they urged the court to reduce the sentence. The background to this matter is that there was one incident of robbery with violence on 13/04/2011 at Nyahururu Township where two individuals ANTHONY MAINA GATHONI and SAMUEL MWANGI GAKUYA were violently robbed of their property which included cash and mobile phones, by persons who were armed with iron bars and a toy pistol.

A day after the robbery the 2nd appellant offered a phone belonging to one of the victims for sale – by some ill twist of fate, the offer was made to someone who knew the victim and was even aware of his loss of a phone – that is how 2nd appellant ended up being arrested. At the time of arrest he was in 1st appellant's company, who was also arrested.

The 1st appellant after being questioned offered to show where the gun which had been used in the robbery was. The police recovered the toy pistol.

The State represented by Miss Karoki made no response on the appeal against sentence.

We have considered the evidence on record, the circumstances under which the gun was recovered, apparently it had found frequent use in intimidating people and indeed was the one used to cow the two victims. Had the appellants pushed their appeal, in fact this is a case where the evidence strongly supported the offence of robbery with violence. We think the appellants were very discerning and wise to abandon the appeal on conviction. They were fortunate to get away with a jail term of 8 years and in our view this sentence is neither harsh nor unfair. We find no reason whatsoever to warrant interfering with the sentence and their appeal is dismissed.

Delivered and dated this 21st day of June, 2013 at Nakuru.

M.J. ANYARA EMUKULE

JUDGE

H.A. OMONDI

JUDGE