

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL APPEAL NO. 19 OF 2011

JOHN OPIYO OGOLLA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal from the original *conviction and sentence in Machakos Chief Magistrate's Court Criminal Case No. 443/2010 by Hon. J. Omenge on 5.1.2011*)

JUDGMENT

1. **John Opiyo Ogolla**, the Appellant was charged, tried and convicted on an alternative Count of handling stolen goods contrary to Section 322 (2) of the Penal Code. The particulars thereof being that on the 17th day of February 2010 at Senior Staff Quarters Athi – River in Machakos District within Eastern Province, otherwise that in the cause of stealing dishonestly received or retained one TV make JVC and one DVD machine make sony knowing or having reason to believe them to be stolen goods. He was tried, convicted and sentenced to twelve (12) years imprisonment with hard labour.
2. Being aggrieved by the sentence passed. In his mitigation the Appellant averred that he is remorseful having understood the virtues of a good and law abiding citizen, he has embraced Christianity and would like to go back to the society to be a role model of the youth who are leading an immoral life.
3. At the hearing he stated that he has a wife with children and he is ailing. He sought to be released or in the alternative reduction of the sentence imposed.
4. In a response thereto, the Learned State Counsel **Mr. Mwangi** asked the Court to confirm the sentence imposed.
5. It has been argued that the sentence imposed was harsh. The sentence provided for the offence of handling stolen goods is imprisonment for a term not exceeding 14 years. A sentence being lenient or harsh may not necessarily warrant intervention by an appellate court, especially if it is undeniably correct. Circumstances of the offence must be considered. In this case the sentence imposed by the trial court was within the law. The accused had been charged with two (2) Counts of robbery with violence, an offence that would have attracted death penalty. He was acquitted of the offence. However, he was found in possession of goods stolen in the course of the said robbery. This makes the offence serious.
6. The court established that the accused was a first offender. In his mitigation the appellant has demonstrated that he has poor eye sight. He was treated at Kenyatta National Hospital where the left eye was found to have cataract. This is not a life threatening ailment.
7. However, taking into consideration the fact that the appellant was a first offender, the sentence imposed being severe, I do quash and set it aside, and substitute it with imprisonment for a term of **5 years**.
8. It is so ordered.

DATED, SIGNED and DELIVERED at MACHAKOS this 30TH day of OCTOBER, 2013.

L.N. MUTENDE

JUDGE