



**REPUBLIC OF KENYA**

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

**CRIMINAL APPEAL NO. 262 OF 2007**

DAVID KAGATIA WANJOHI.....APPELLANT

**VERSUS**

REPUBLIC.....RESPONDENT

**JUDGMENT OF THE COURT**

***(Appeal from a judgment of Chief Magistrate's Court at Nyeri L.W GITARI SPM dated 28th May, 2007)***

1. David Kagatia Wanjohi the appellant has filed an appeal against his conviction on the charge of Handling Stolen Property. The Appellant filed his grounds of appeal on the 20th September 2007. The appellant's case ,with others who were acquitted was heard by the Hon. Mr. Nyakundi. In his judgment dated the 20th of March 2007 Hon. Nyakundi found the appellant guilty of the charge of Handling Stolen Property. After conviction the matter was deferred for sentence and on the 28th of May 2007 Hon. Lucy Gitari sentenced the appellant for ten (10) years.
2. When the appeal came for hearing before us on the 14th of October 2013 the appellant abandoned his appeal on the conviction and asked us to consider reducing his sentence of 10 years. We note the following the accused was sentenced on the 28th May 2007 after a full trial. It is note worthy that the accused was not found guilty of the charge of robbery with violence but was found guilty of the charge of Handling Stolen Property. The stolen goods that were recovered from his place were one video deck, two pieces of mountain bike mudguard, a hammer and a water jug. Mr. Njue the Learned State Counsel in his submissions left it to us to exercise our discretion on the accused's plea. We note that the appeal was filed within time.
3. The offence of Handling Stolen Property is a felony and carries a sentence of imprisonment with hard labour for a term not exceeding fourteen (14) years. The Appellant was convicted in May 2007, his appeal is being heard in 2013, about six (6) years plus four and half (4 1/2) months after conviction. The offence is a felony we note that the accused feels remorseful. Considering the time he has been in prison we find that indeed he has served the bigger portion of his sentence. We therefore reduce his sentence to the period that he has served.
4. His appeal on the sentence is therefore allowed. He shall be set free forthwith unless lawfully held.
5. Orders accordingly.
6. Dated signed and delivered this 18th Day of October 2013.

**OUGO R. E**

**ABUODHA N. J**

**JUDGE**

**JUDGE**

***Delivered in open Court in the presence of Appellant in person and Mr. Njue for the Republic.***