



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CRIMINAL APPEAL 41 OF 2010**

**MOSES CHEGE FATUMA.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

The appellant was the 2<sup>nd</sup> accused in Nyahururu Principal Magistrate's Court Criminal Case No. 9 of 2009 in which he was together with two other accused persons charged with the offence of robbery with violence contrary to Section 296(2) of the Penal Code (*Cap. 63, Laws of Kenya*).

The appellant was also charged with the alternative charge of handling stolen goods contrary to Section 322(2) of the Penal Code.

The appellant's 1<sup>st</sup> co-accused died during the course of trial of the case in the lower court, and the case therefore abated and was terminated.

The appellant and the 3<sup>rd</sup> co-accused were acquitted on the charge of robbery with violence, and the 3<sup>rd</sup> accused was also acquitted of the alternative charge of handling stolen property. The appellant was found guilty of handling stolen property and was convicted accordingly.

Aggrieved with both his conviction and sentence, the accused has come to this court on appeal on six grounds which he abandoned at the hearing of the appeal and substituted with the ground on sentence only.

The appellant was found guilty of the offence of handling stolen property, contrary to Section 322(2) of the Penal Code. The punishment for that offence is imprisonment for fourteen (14) years. The appellant was sentenced to five (5) years imprisonment.

The appellant pleads that he is a first offender, a child of a single parent, that he suffers from epilepsy. That he was generally of good character before his arrest, and had never been reported to his area chief for any offence to society or bad conduct, that being in prison he has learned his lesson not to associate with criminal elements in society. He therefore prayed for a reduction of his sentence.

Ms Idagwa, learned State Counsel however opposed the appeal on sentence. Counsel submitted that the

sentence. Counsel submitted that the sentence was lenient. The law prescribes a sentence of 14 years with hard labour. The appeal on sentence should therefore be rejected.

We have considered the applicant's grounds of mitigation for the reduction of sentence. The evidence before the lower court shows that the appellant was the primary beneficiary of the offence of robbery with violence. It was in his house. Under his bed, that the grills to the complainant's motorbike KBC 415U make Hajolin 125/A was found. He is also the person who had arranged for the change of the colour of the motor bike from black to red. The claim that the motor bike was for a Mr. Kawe was properly disregarded by the learned trial magistrate as the said Kawe never, appeared in court.

The appellant urged us to reduce the sentence. We have already observed that the punishment for handling stolen goods is imprisonment with hard labour for a term not exceeding fourteen years. We have also observed from State Counsel's opposition to the appeal on sentence that the sentence of five years was lenient. We accept and agree with that observation. We also note that there was no evidence anywhere in the lower court's record that the appellant suffer from epilepsy or other disease. In any event there is adequate treatment in the prison service for such inmates. This is not a ground for reduction of sentence.

In exercise therefore of the discretion conferred upon this court by Section 354(2)(b) of the Criminal Procedure Code, we enhance the appellant's sentence for the offence of handling stolen goods from five years imprisonment with hard labour to a period of seven years to run from the date of his conviction.

It is so ordered.

**Dated, signed and delivered at Nakuru this 20<sup>th</sup> day of April, 2012**

**M. J. ANYARA EMUKULE**  
**JUDGE**

**H. A. OMONDI**  
**JUDGE**