



**REPUBLIC OF KENYA**

**High Court at Nakuru**

**Criminal Appeal 58 of 2011**

**DANIEL MAINA GIKUNA.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

Daniel Maina Gikuna, the appellant herein, was convicted for the offence of preparation to commit a felony contrary too **Section 308** of the **Penal Code**. He had been charged with two other persons. The first accused was acquitted of the offence but the appellant and another were convicted and sentenced to seven (7) years imprisonment each.

When the appellant filed his petition of appeal in January 2011, he was aggrieved by both the conviction and sentence and sought to have the conviction quashed and sentence set aside. However, at the hearing of the appeal, the appellant abandoned the appeal on conviction and only asked for leniency on the sentence. He therefore beseeched the court to consider the fact that he has been undergoing rehabilitation for purposes of integration into the society; he has trained in vocational skills which he wishes to put to use; he is remorseful and will live as a law abiding citizen; he is a father of eight children, four of whom are adopted and they all require his support.

The state opposed the appeal. Mr. Omutelema, learned counsel for the State submitted that the appellant was given the minimum sentence under **Section 308(1)** of the **Penal Code** and the appeal should be dismissed. The appellant was charged under **Section 308(1)** of the **Penal Code** which provides as follows:-

**“S308(1). Any person found armed with any dangerous or offensive weapon in circumstances that indicate that he was so armed with intent to commit any felony is guilty of a felony and is liable to imprisonment of not less than seven years and not more than fifteen years.”**

It is clear that the minimum sentence is seven (7) years imprisonment.

The appellant was handed the minimum sentence which is legal and fair in the circumstanes and the court cannot interfere with it. For that reason, the appeal is dismissed, and the sentence confirmed. It is so ordered.

**DATED and DELIVERED this 7<sup>th</sup> day of December, 2012.**

**R.P.V. WENDOH  
JUDGE**

**PRESENT:**

The appellant – in person  
Mr. Omwenga for the State  
Kennedy – Court Clerk