



**REPUBLIC OF KENYA
IN THE HIGH COURT
AT BUSIA**

CRIMINAL APPEAL 25 OF 2011

ALIYI WEPUKHULUAPPELLANT

VERSUS

REPUBLICRESPONDENT

J U D G E M E N T

The appellant Aliyi Wepukhulu in his amended petition of appeal filed on 26/08/11 pleads for leniency on grounds that his father and brother passed away. He has a sickly mother and sister who depend on him. His only prayer is for review of sentence.

The appellant was convicted of the offence of robbery contrary to Section 296 (1) of the Penal Code by Busia Resident Magistrate and sentence to serve seven years imprisonment. The maximum sentence is fourteen (14) years imprisonment. The State Counsel Mr. Okeyo argued that the sentence was lawful and reasonable.

The accused was a first offender and pleaded for leniency before the trial court. He said that his father and three brothers were deceased and he was left with a big family responsibility. To his amended petition of appeal the appellant attaches his treatment notes dating back to the time of arrest. His medical history is that on arrest, the appellant was arrested by a mob at the scene. The mob assaulted him and he sustained several injuries. He was treated for chest pains and persistent headaches at Busia District Hospital for a period of four months while remanded at Busia G.K. Prison custody.

The sentence of seven years imprisonment was lawful considering that the maximum is fourteen (14) years. It is not disputed that he was arrested by PW1, PW2 and PW3 at the scene who beat him up before they were joined by a mob. The prolonged treatment on the chest injuries are a demonstration that the appellant suffered as a result of the assault by the mob. He was robbing the complainant of a Television set before he was arrested and the exhibit recovered from him at the scene. Being a first offender and in view of the circumstances of the offence, I hereby set aside the seven (7) years imprisonment and substitute it with five (5) year imprisonment

The appeal is therefore successful and it is allowed on those terms.

**F. MUCHEMI
J U D G E**

Judgement dated and delivered on the 7th day of March 2011 in the presence of the appellant and the State Counsel Mr. Okeyo.

F. MUCHEMI

JUDGE