



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CRIMINAL APPEAL NO. 264 OF 2009

(From Original Conviction and Sentence in Criminal Case No. 640 of 2009 of the Senior Resident Magistrate's Court at Voi: M.S.G. Khadambi – P.M.)

CLAUDIS MWADALI APPELLANT

=VERSUS=

REPUBLIC RESPONDENT

JUDGEMENT

CLAUDIS MWADALI, the Appellant herein has filed this appeal against his conviction by the learned Resident Magistrate sitting at Voi Law Courts. The Appellant faced a main charge of **HOUSE-BREAKING AND STEALING CONTRARY TO SECTION 304(1) and SECTION 279(b) OF THE PENAL CODE**. In addition the Appellant faced an alternative charge of **HANDLING SUSPECTED STOLEN PROPERTY CONTRARY TO SECTION 322(2) OF THE PENAL CODE**.

The Appellant initially entered a plea of **'not guilty'** to both charges and his trial commenced before **HON. NYAKUNDI** Resident Magistrate on 28th August 2009. However after two witnesses had testified the Appellant changed his plea and entered a plea of guilty to the alternative charge. He was then convicted of the offence of Handling Stolen Property and was sentenced to serve ten (10) years imprisonment. The Appellant has now appealed against both his conviction and sentence.

I have carefully perused the record of the proceedings before the trial court. I am satisfied that the conviction of the Appellant was proper as he did enter a plea of guilty to this alternative charge. I do confirm that conviction.

However it is my view that a term of ten (10) years for a first offender is manifestly harsh. The value of the stolen items was about Kshs.2,000/- only. The stolen items were recovered. The ten (10) year sentence is incompatible with the offence. The learned trial magistrate ought to have considered an alternative sentence like a fine, suspended sentence or probation. The Appellant having been sentenced on 6th October 2009 has spent about 1½ years behind bars. In my view this is sufficient punishment. I therefore set aside this ten year sentence and substitute it with time already served. The accused is to be set at liberty unless he is otherwise lawfully held.

Dated and Delivered in Mombasa this 30th day of May 2011.

M. ODERO
JUDGE

In the presence of:
Appellant in person
Mr. Onserio for State