

identified the photographs in court, PW2 as the owner and PW6 as one of the police officers who assisted to recover the machine. The machine had been released to the complainant for use after it was recovered. The purchase receipt was also an exhibit in court.

The Appellant argues that the machine ought to have been produced physically in court. I do not find this necessary in that the owner identified the photographs and produced the purchase receipt bearing the serial number. PW2's evidence was corroborated by that of PW6 who saw the machine on recovery and arranged for the same to be photographed. PW6 identified the photographs in court.

In his defence, the Appellant explained how he was arrested from his house on the material day around 8.00 p.m. He denies that he had the machine. The trial court did not believe the defence. The magistrate said the Appellant failed to give a reasonable explanation on how he came into possession of the machine. The magistrate found the evidence of PW2 and PW6 credible.

I agree with the trial court that the evidence of PW2 and PW6 was watertight and was not shaken by the general defence of the appellant. In the absence of an explanation on the possession of the stolen property, the Appellant was bound to be convicted. The conviction was based on cogent evidence rendering the grounds of appeal not merited. I accordingly uphold the conviction.

On sentence, the maximum provided for by section 322 (2) of the Penal Code is fourteen (14) years imprisonment. The seven (7) years imposed was within the law. However, the Appellant was a first offender and this is a factor that ought to have been considered while sentencing him.

The Appellant has only served less than one (1) year in prison. I set aside the seven (7) year imprisonment sentence and substitute it with three (3) years imprisonment.

**F. N. MUCHEMI
JUDGE**

Dated, Delivered and Signed at Bungoma this 1st day of November, 2010 in the presence of the Appellant and the State Counsel Mrs. Letting.

**F. N. MUCHEMI
JUDGE**