



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**  
**Criminal Appeal 100 & 101 of 2006 (Consolidated)**

**DICKSON OCHIENG ODHIAMBO.....1<sup>ST</sup> APPELLANT**

**JOSHUA KIBISO AUSENZE.....2<sup>ND</sup> APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

The Appellants, **DICKSON OCHIENG ODHIAMBO** and **JOSHUA KIBISO AUSENZE**, were with two others charged with robbery with violence contrary to **Section 296(2)** of the **Penal Code**. In the alternative each of them was also separately charged with handling stolen property contrary to **Section 322(2)** of the **Penal Code**. Upon trial the Appellants and 2 others were convicted on the alternative charges of handling stolen property. The 1<sup>st</sup> Appellant was sentenced to 7 years imprisonment while the 2<sup>nd</sup> Appellant, who had previous relevant convictions, was sentenced to 9 years imprisonment. The Appellants have appealed against that conviction and sentence. Mr. Mugambi, the learned state counsel, does not support the conviction.

Having perused the record I agree with Mr. Mugambi, the learned state counsel, that the Appellants' conviction cannot be allowed to stand as the stolen property allegedly found with them was not positively identified by the complainant. For instance the complainant said that he had put a mark on the stolen TV which was allegedly found with the Appellants but he did not specify that mark.

In the circumstances I allow this appeal, quash the conviction and set aside the sentence. The Appellants shall be set free forthwith unless otherwise lawfully held.

**DATED and delivered at Nakuru this 3<sup>rd</sup> day of October, 2008.**

**D. K. MARAGA**

**JUDGE**