



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Criminal Appeal 251 of 2004

(From original conviction and sentence in Criminal Case No.1269 of 2004 of the Chief Magistrate's Court at Makadara –Miss Oyaro RM)

SIMON NZUKI MUTISYAAPPELLANT

VERSUS

REPUBLIC RESPONDENT

JUDGMENT

The Appeal is on sentence only. The Appellant was convicted on his own plea of guilty on the alternative count of handling stolen goods contrary to Section 322 (2) of the Penal Code. Upon conviction he was sentenced to 7 years imprisonment.

The Appellant was aggrieved by the sentence and hence lodged the instant Appeal. In his Petition of Appeal, the Appellant stated that he was a first offender, pleaded guilty to the charge, that he was remorseful and repentant, that he was misled by wayward company to commit the offence and finally that he was a young man aged 23 years who should be given another chance in life. When the Appeal came up for hearing, the Appellant in his oral submissions reiterated the grounds set out in the Petition of Appeal aforesaid. He however added that the sentence imposed was harsh and excessive. Mrs. Gakobo, Learned State Counsel who appeared for the State, submitted that though the sentence imposed was legal, it was nonetheless harsh considering that the Appellant pleaded guilty and spared the Court its valuable time, and secondly, he was a first offender. Finally Counsel pointed out that some of the stolen items were recovered.

As it has been constantly stated, sentencing is an exercise in discretion by the sentencing Court. Accordingly unless it is shown that the discretion was not exercised judicially but rather capriciously, the Appellate Court would rarely interfere with such exercise in discretion. Further it has also been held that the Appellate Court would only interfere with the sentence imposed if it is demonstrated that it is illegal, manifestly harsh and excessive, that in arriving at the sentence, the sentencing Court took into account irrelevant or extraneous matters and failed to take into account relevant matters.

The sentence imposed on the Appellant no doubt is legal. However considering the fact that the Appellant pleaded guilty to the charge at the first instance and thus saved the Court its valuable time and the fact that the Appellant was a first offender, it would appear that the sentence imposed was manifestly harsh and excessive in the circumstances. I would in the premises interfere with the sentence to the extent that I will reduce it to a term of 3 $\frac{1}{2}$ years. Accordingly I vary the Appellant's sentence to 3 $\frac{1}{2}$ years

imprisonment with effect from the date of conviction.

Dated at Nairobi this 28th day of February, 2007.

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MAKHANDIA

JUDGE

Judgment read, signed and delivered in the presence of:-

Appellant

Mrs. Gakobo for State

Erick Court Clerk

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MAKHANDIA

JUDGE