

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

Criminal Appeal No. 434 of 2003

GATHURI GITHINJI MENJO.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The appellant Gathuri Githinji Menjo was charged with two counts of **robbery with violence contrary to Section 296(2)** of the **Penal code**. He was further charged with one count of **preparation to commit a felony contrary to Section 308(1)** of the **Penal code**. He was alternatively charged with two counts of **handling stolen property contrary to Section 322(2)** of the **Penal Code**. All the above charges arose from the robberies which took place between the 19th of June 2003 and the 16th of July 2003 at Captain and Rurii villages in Nyandarua District the result of which various complainants were robbed and some of the goods recovered in the possession of the appellant. When the appellant was arraigned before the trial court, he pleaded guilty for **handling stolen property contrary to Section 322(2)** of the **Penal Code**. He was sentenced to serve five years imprisonment. The appellant was aggrieved by his conviction and sentence and has appealed to this court.

Although in his petition of appeal the appellant had challenged his conviction and sentence, at the hearing of the appeal he told the court that he was abandoning his appeal against conviction. He however prayed that the sentence meted out in this case be consolidated with the sentence which was meted out by the trial magistrate's court in **Nyahururu PMC Criminal Case No. 2569 of 2003** where he was sentenced to serve five years imprisonment after the charge of **robbery with violence under Section 296(2)** of the **Penal Code** was reduced to a conviction under **Section 296(1)** of the **Penal Code**.

I have perused the said file and noted that the appeal which he had filed in respect of the conviction is scheduled to be heard by a two-judge bench of this court on 4th of May 2006. The reason why the said appeal is listed before a two-judge bench is because there is a possibility that the court may convict the appellant for the more serious offence of **robbery with violence contrary to Section 296 (2) of the Penal Code**. In the circumstances therefore this court cannot consolidate the sentence in this case and that of the other pending appeal because there is a likelihood that the appellant may be sentenced to serve a more harsher punishment. The appellant's plea for consolidation of sentence therefore is disallowed.

Having considered the circumstances under which the appellant was found in possession of the said stolen items, I see no reason why I should interfere with the sentence which was meted out to him by the trial magistrate. In the circumstances of this case, the sentence fitted the crime. I therefore dismiss the appeal filed by the appellant both for consolidation and for reduction of sentence. The effect of the judgment of this court is that the appeal filed by the appellant is hereby dismissed in its entirety. I confirm the conviction and the sentence of the trial magistrate. It is so ordered.

DATED at NAKURU this 10th day of March 2006.

L. KIMARU

JUDGE