



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU**

Criminal Appeal 44 of 2003

[From original conviction and sentence in Criminal Case No. 1732 of 2002 in the Chief Magistrate's Court at Nakuru Mrs. S. Muketi – S.R.M.]

REPUBLIC.....APPELLANT

VERSUS

JOHN MWANGI MUIRURI.....RESPONDENT

JUDGEMENT

The appellant was initially charged with the charge of robbery with violence contrary to section 296(2) of the Penal Code. After a full trial, the appellant was convicted of a lesser charge of simple robbery and sentenced to 7 years imprisonment.

The particulars of the charge stated that on the 12th day of September, 2002 at Christ the King Church in Nakuru District of the Rift Valley Province i.e. jointly with others not before Court robbed Moses Oluoch Olango of a mobile phone valued at Kshs.6,000/= Siemens A-35, an umbrella valued at Kshs.200/= a wallet all valued at Kshs.6,700/= and at or immediately before or immediately after the time of such robbery threatened to use actual violence on the said Moses Oluoch Olango.

Although the grounds of appeal raised in the petition of appeal challenge the conviction, during the hearing of this appeal the appellant indicted to this court that he was only appealing against the sentence and the grounds that the appellant put forward was that he has been in custody and prison since he was incarcerated for four years. Within the said period he has undertaken a vocation training in tailoring and he prayed that the sentence be reduced so that he can contribute to the society having reformed.

This appeal was opposed by the learned Senior State Counsel Mr. Koech on behalf of the state.

I have therefore considered the evidence on record, the circumstances of the appellant who is a very young man, and the fact that after the robbery he was beaten up by members of the public and the stolen mobile phone for the complainant was recovered immediately. Moreover out of the sentence of seven (7) years the appellant has served a period of four years. I consider it to be adequate punishment and I hereby

reduce the sentence and commute the same to the period whereby served.

The appeal is hereby allowed and unless the appellant is otherwise lawfully held, he is set at liberty in regard to the conviction and sentence in this matter.

It is so ordered.

Judgement read and signed at Nakuru in 9th day of August, 2006.

MARTHA KOOME

JUDGE

9.8.2006

Before: M. Koome – Judge

Gumo for the State

Mwiti: Court Clerk

Appellant present

Judgement read and signed in Nakuru this 9th day of August, 2006.

MARTHA KOOME

JUDGE