



**REPUBLIC OF KENYA**

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

**CRIMINAL APPEAL 238 OF 2003**

**GODFREY NGOTHO NDUNGU.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGEMENT**

The Appellant has appealed against the original and conviction and sentence in PM Court, Nyahururu No. 1760 of 2003. In that case the Appellant had been charged for the offence of Church –breaking and committing a felony, contrary to Sec. 306(2) of the Penal Code. The Alternative Charge is that of Handling Stolen Goods, contrary to Sec. 322(2) of the Penal Code. The facts of the prosecution case as stated in the charge sheet are as follows:

“On the night of 14th /15th May, 2003 at Limunga Village in Laikipia District within the Rift Valley Province, broke and entered into a building namely St. Peters Catholic Church and committed a felony namely theft of fifteen picture frames, two cabinet drawers and two packets of candles all valued at Kshs.5,000/= the property of the said Church.” Alternative Charge:

“On the 15th May, 2003 at Maili Saba area, in Laikipia District within the Rift Valley Province, otherwise than in the course of stealing dishonestly received or retained fifteen picture frames, two cabinet drawers and two packets of candles knowing or having reason to believe them to be stolen goods.” When the Appellant appeared before the Learned Magistrate viz, Mr. D. K. Ngomo, PM he pleaded “Guilty” and he was convicted accordingly. Consequently, he was sentenced to 5 years imprisonment and 3 strokes of the cane. During the hearing of the appeal, the Appellant complained that the sentence was harsh and excessive. He concluded that the sentence should be reduced.

On the other hand, the state through Mr. Gumo, Ass. DPP has deposed that the sentence was deserving since the Appellant has not shown any remorse. Besides the above, Mr. Gumo has also submitted that the appellant has offered both God and human beings. In reply the Appellant stated that he was asthmatic and he also prayed for forgiveness before God and the Court.

According to Section 306 of the Penal Code, Cap. 63, Laws of Kenya, the maximum sentence provided by law is 7 years imprisonment. In this case, the Appellant pleaded “Guilty” and hence saved the Court’s time. The Appellant has now served about 2 years imprisonment. He has asked for forgiveness and claims to be remorseful. The court in its discretion hereby reduces the sentence to the period already served. In addition to the above, I hereby set aside the 3 strokes of the cane since corporal punishment has been outlawed. It is only to that extent that the appeal is hereby allowed.

**MUGA APONDI**

**JUDGE**

Judgement read, signed, delivered in open court in the presence of

**MUGA APONDI**

**JUDGE**

**31st March, 2005**

Before: Muga Apondi – Judge

Gumo – Ass. DPP

**GUMO:** I have received a signal from the Prison that the Appellant died on 4th March, 2005 at the Nakuru Provincial General Hospital. I pray that his appeal be marked as abated.

**COURT:** Though the judgement is ready, the appeal is now marked as abated due to the death of the Appellant.

**MUGA APONDI**

**JUDGE**

**31ST MARCH, 2005**