



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

**Criminal Appeal 126 of 2004**

**KABUKI GATHANO KABUKI.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**J U D G M E N T**

The Appellant has appealed against the original conviction and sentence in Criminal case No.1626 of 2003 that was passed upon him by the Senior Resident Magistrate, Molo viz, Mr. R. Kirui. In that case, the Appellant had been charged for the offence of Super Market breaking and committing a Felony, contrary to Section 306(a) of the Penal Code. The alternative charge was that of handling stolen goods, contrary to Section 322(2) of the Penal Code.

The facts of the Prosecution case as stated in the charge sheet for the main count are as follows:-

**“On the night of 2nd and 3rd July, 2003 at Molo Stores Super Market in Nakuru District of the Rift Valley Province, jointly with others not before court broke and entered into a building namely Molo Stores Super Market of MBUGUA THUO and did steal from therein 117 pad-locks, 158 Safaricom scratch cards, 20 Kencell scratch cards and cash money Kshs.1,500/- all in a total value of Kshs.80,991/- the property of MBUGUA THUO.”**

After a full trial, the Appellant was found “Guilty” of the main charge and he was convicted accordingly.

Consequently, the Appellant was sentenced to 3 years Imprisonment. During the hearing of the appeal, the Appellant urged the court to reduce the sentence and also put him on probation. The Appellant complained that the sentence of 3 years was excessive.

On the other hand, the State through Mr. Gumo, Assistant Deputy Public Prosecutor stated that the Appellant was found with stolen scratch cards apart from other stolen items. Mr. Gumo submitted that the above showed that the Appellant lived on the sweat of others.

Apart from the above, he also submitted that the sentence of 3 years was not harsh nor excessive, and hence he urged the court to confirm the same. This court has clearly perused the above, together with the record of appeal. From the evidence on record, it is explicit that the Appellant was arrested in possession of stolen goods on the following day after the commission of the offence. The said stolen items were later identified by the complainant. No wonder, the Appellant never challenged the conviction. He only urged the court to reduce the sentence of 3 years. The maximum sentence for Super Market Breaking and Committing a felony is 7 years.

On the other hand, the Appellant has only served 1 year and 3 months out of his sentence. In exercise of my discretion, I hereby reduce the sentence to the period already served given the circumstances of the case. The Appellant should be released forthwith unless lawfully held.

MUGA APONDI

JUDGE

26TH JULY, 2005

Judgment read signed and delivered in open Court in the presence of the Appellant and Mr. Gumo for State.

MUGA APONDI

JUDGE

26TH JULY, 2005