



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

**CRIMINAL APPEAL NO.265 OF 2003**

**(From original conviction and sentence of the SRM's court at Nyamira in criminal case  
No.448 of 2003.)**

**HEMON SANI ONSONGO ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

**JUDGMENT:**

The appeal is against the conviction and sentence by Keroka D.M.II's court for the offence Nursery breaking and committing a felony c/s 306(a) Penal Code and that of wearing uniform without authority c/s 184(1) Penal Code. Accused were jailed for 2 years for the first offence and 1 month for the 2nd.

The appellant were found with chairs which were stolen from the nursery school. The learned D.M. directed himself properly when he found that the doctrine of vacant possession applies. The accused were found with the chairs soon after they were stolen. The magistrate reached the proper conclusion.

As for wearing uniform there was no dispute that the appellant was found wearing police uniform.

I found the conviction on both counts was proper and uphold the conviction. I however found the sentence was harsh. The value of the stolen chairs was only shs.750/=. The chairs were recovered. A term of imprisonment for 2 years is manifestly excessive. I therefore set aside the sentence and substitute it with a term of imprisonment for the term already served.

Accused should therefore be set at liberty forthwith.

It is so ordered.

**KABURU BAUNI**

**JUDGE**

**5/2/2004**

**Signed, dated and delivered on this 5th February 2004**

**KABURU BAUNI**

**JUDGE**

**5/2/2004**