

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL APPEAL NO.281 OF 1999

From Original Conviction(s) and Sentence(s) Criminal in Case No.2992 of 1996 of the Resident Magistrate's Court at NAIVASHA

**DANI GITHINJI NJOGU.....APPELLANT
VERSUS
REPUBLIC.....RESPONDENT**

JUDGMENT

These appeals were consolidated but appellants in criminal appeal Nos. 282, 283 and 284 of 1999 were said to have died when they were called out for hearing. Those appeals have accordingly abated.

This appeal no. 281 of 1999 is yet by the same appellant where we have had occasion to hear and comment on his record. At the hearing of the appeal, the learned counsel for the republic rightly submitted that the appellant should have been convicted of the offence of handling stolen property.

The complainant in the robbery charges pw1 did not identify any of the robbers. One month after the robbery however, he was called to the police station where he identified some of his items. The appellant had by then been arrested. The appellant laid no claim over the property and offered no explanation for possessing the same. The evidence could not sustain a conviction for robbery with violence.

We accordingly allow the appeal quash the conviction and set aside the sentence. In place thereof, we substitute a conviction for the offence of handling stolen property c/s 322(2) of the Penal Code and sentence the appellant to seven(7) years imprisonment.

He shall be under police supervision for 5(five) years after completion of the prison term.

Orders accordingly.

MBOGHOLI MSAGHA

JUDGE

16/7/2002

G. MBITO

JUDGE