



**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**APPELLATE SIDE**

**CRIMINAL APPEAL NO. 441 OF 1999**

**(From Original Conviction and Sentence in Criminal Case No. 3400 of 1999 of the Chief Magistrate's Court at Mombasa –B. Maloba –S.R.M.)**

**PETER OCHIENG AORA ..... APPELLANT  
- VERSUS -  
REPUBLIC ..... RESPONDENT**

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

The Appellant was charged together with another and convicted for the offence of preparing to commit a Felony contrary to Section 308 (2) of the Penal Code. He was sentenced to serve 7 years on his own plea of guilty. He now appeals against sentence. The facts of the case are that on the 23.10.99 at about 6.30 p.m. PC Anthony Wanjau PW1, who was in the company of PC Muge Abdi PW2, were on patrol duties at Mishomoroni are when they saw some people standing in a dark place. They surrounded and caught them and on searching them found the appellant in possession of a Toy Pistol. They failed to give a satisfactory answer as to why they were hiding and in possession of the Toy Pistol.

In his appeal, the Appellant pleads for mercy saying he has learned his lesson and will not repeat the same. The State Counsel supported the conviction but said the sentence is illegal and urged the court in exercise of its powers under Section 354(3)(b) of the Criminal Procedure Code to apply the correct sentence. The Maximum sentence provided for is 5 years with hard labour. I have considered the circumstances of the offence and the plea of guilty. In the circumstances I reduce the sentence to 4½ years to run from the time sentence was passed by the trial court. The appeal shall succeed to that extent only.

**Dated and Delivered at Mombasa this 23rd day of August, 2002.**

**P.M. TUTUI**

**COMMISSIONER OF ASSIZE**