



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**APPELLATE SIDE**

**CRIMINAL APPEAL NO. 220 OF 2000**

**(Being an Appeal from Original Conviction and Sentence in Criminal Case No.1148 of 1999 of the Resident Magistrate's Court at Voi –E.N. Maina-SRM)**

**MUTUNGA KALOKI MWANZWA ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

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

Appellant was charged with the offence under S.308 (2) of the Penal Code being preparation to commit a felony. He was sentenced to (3) three years together with hard labour. He today appeals against this sentence having abandoned his appeal against conviction. The sentence provided for under this Section 308(2) of the Penal Code is provided under S.308 (4) of the same and it is imprisonment for five years with hard labour. It is 10 years if he had previously been imprisoned for felony relating to property. There was no such evidence. So the sentence awarded was correct. It is not excessive nor illegal.

Appellant has pleaded that he is married with 5 children and looks after all including his sisters. However the learned magistrate took into consideration all this. On appeal the principle upon which this court directs itself is that the discretion of the trial Court remains undisturbed unless that Court erred in principle and or left out relevant or considered irrelevant matters, or that the sentence was too excessive or too low. Here I see nothing to fault the Senior Resident Magistrate's award of sentence but I however would vary the jail term by placing appellant in Community Order Service to serve the remainder of the period he is to serve under the same order. Appeal is allowed to that extent.

**Delivered in open Court on this 12th Day of July, 2001.**

**A.I. HAYANGA**

**JUDGE**