



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KAKAMEGA**

**(CORAM: MAJANJA J.)**

**CRIMINAL APPEAL NO. 250 OF 2011**

**BETWEEN**

**ERICK KISAMBO AMBWERE.....APPELLANT**

**AND**

**REPUBLIC.....RESPONDENT**

*(Being an appeal from the original conviction and sentence of Hon. P.W. Macharia SRM delivered on 22<sup>nd</sup> May 2007 at the Vihiga Principal Magistrate's Court in Criminal Case No. 392 of 2007)*

**JUDGMENT**

1. This is an appeal from a plea of guilty. The appellant, **ERICK KISAMBO AMBWERE**, was arraigned for the offence of robbery with violence contrary to **section 296(2)** of the **Penal Code (Chapter 63 of the laws of Kenya)** and an alternative charge of handling stolen goods contrary to **section 322(2)** of the **Penal Code**. He was sentenced to ten years' imprisonment.
2. I have reviewed the proceedings and it is not clear which offence the appellant pleaded to. If it was the principal charge of robbery with violence, then he ought to have been sentenced to death as this was the mandatory sentence. The facts read to the appellant disclosed the offence of robbery with violence. On the other hand, the sentencing notes are clear that the appellant was being sentenced for stealing hence the alternative charge of handling stolen goods is excluded.
3. The conviction and sentence were contrary to **section 169** of the **Criminal Procedure Code (Chapter 75 of the Laws of Kenya)** which requires the court to specify the offence and section of the **Penal Code** or other law under which the accused is convicted and the punishment to which he is sentenced. I cannot therefore say the appellant's plea of guilty was clear and unequivocal.
4. The appellant has served almost the entire sentence as he has been in prison since 2007. Given the lapse of time and the likelihood that he may not get a fair trial, no purpose will be served by a retrial or further proceedings.
5. In the circumstances, I quash the conviction and sentence. The appellant is set free unless otherwise lawfully held.

**DATED and DELIVERED at KAKAMEGA this 5<sup>th</sup> day of April 2018.**

**D.S. MAJANJA**

**JUDGE**

Appellant in person.

Mr Ng'etich, Senior Assistant Director of Public Prosecutions, instructed by the Office of Director of Public Prosecutions for the respondent.