

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL APPEAL NO. 257 OF 2011

NICHOLAS OKELO BUNGU.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

Being an appeal from the original conviction and sentence in the

Chief Magistrate's Court at Makadara Cr. Case No. 4448 of 2010

delivered by Hon. M. Muya, CM on 30th September, 2011).

JUDGEMENT

The Appellant was charged with the offence of robbery with violence contrary to Section 296(2) of the penal Code. It was alleged that on 20th July, 2010, at Botela Estate in Nairobi within Nairobi area Province jointly with another not before court, being armed with a dangerous weapon namely, pistol robbed Joyce Ndunge Jamin cash Kshs. 5,200/=, mobile phone Nokia 1130 valued at Kshs. 3,000/= and a handbag valued at Kshs. 150/= all total value Kshs. 8,350/= and at or immediately before or immediately after such robbery, threatened to use actual violence to the said Joyce Ndunge Jamin.

The Appellant was found guilty of the lesser offence of simple robbery contrary to section 296(1) of the Penal Code and convicted accordingly. He was sentenced to serve seven years imprisonment. He preferred this appeal on sentence alone. In his mitigation, he submitted that he was remorseful and had since learnt the value of being a law abiding citizen. In addition, he urged the court to release him so that he could be more useful to the society having trained as a mason in the prison. Learned State Counsel, Miss Kimiri did not oppose the appeal. She noted that before his conviction, the Appellant had been in remand for one year which is equivalent to the balance of the sentence.

I have accordingly considered the appeal and the respective submissions. The Appellant having been sentenced on 30th September, 2011 means that he has served five years and about ten months. Record shows that he took plea on 18th November, 2010 which adds up to a custodial period of close to seven years. The Appellant having pleaded for leniency, and being remorseful for what he did, it is only justiciable that the court sets him free. I accordingly hold that he has served sufficient sentence. I order that he be forthwith set free unless otherwise lawfully held.

Dated and Delivered at Nairobi this 15th Day of June, 2017.

G.W. NGENYE-MACHARIA

JUDGE

In the presence of;

1. Appellant present in person.

2. *Ms. Kimiri for the Respondent.*