

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

CRIMINAL APPEAL NO.63 OF 2013

MOSES MUTEI BARASAAPPELLANT

VERSUS

REPUBLICRESPONDENT

(An Appeal arising out of the conviction and sentence of M. Munyekenye SRM delivered on 1st August 2013 in Busia Criminal case no.261 of 2013)

J U D G M E N T

1. This is an Appeal against sentence only. The Appellant having been convicted on the offence of Handling Stolen Property Contrary to Section 322(1) of The Penal Code was sentenced to imprisonment for 14 years. The Appellant challenges that sentence as being manifestly harsh.
2. When an Appeal Court is asked to review sentence, it must be guided by the proposition restated in **Wanjema v Republic [1971] E.A 494** where the Court held:-

“An Appellate court should not interfere with the discretion which a trial court has exercised as to sentence unless it is evident that it overlooked some material factor, took into account some immaterial factor, acted on a wrong principle or the sentence is manifestly excessive in the circumstances of the case.”

3. The Appellant does not and could not question the legality of the sentence. A person convicted for the offence under Section 322 (2) of The Penal Code is liable to imprisonment for 14 years. Barasa was sentenced to this maximum term. It is nevertheless a principal of sentencing that a first offender would normally not be punished to the maximum sentence unless some aggravating circumstances exist. Barasa was a first offender. Did aggravating circumstances exist to warrant the punishment meted? The Learned Trial and sentencing Magistrate explained herself as follows:-

“I have considered the fact that the accused is a first offender. I have also considered his mitigation. I however find that the accused dishonestly retained stolen goods of which a watchman had been killed in obtaining the goods. Though the accused has not been convicted of the crime of Robbery with violence, I find that his actions were offerly in bad faith. I proceed and sentence the accused to 14 years imprisonment with no alternative as to fine. Right of appeal 14 days.”

A life was lost in the course of the Robbery in which the goods found with the Appellant were stolen. The Magistrate took the view that the Appellant acted in overly bad faith in obtaining and retaining goods stolen in such grisly circumstances. This Court cannot fault the Sentencing Court. The Appeal is dismissed in its entirety.

DATED, SIGNED AND DELIVERED AT BUSIA THIS 5TH DAY OF MARCH 2015

F. TUIYOTT

J U D G E

IN THE PRESENCE OF:

KADENYI.....COURT CLERK

.....FOR THE APPELLANT

.....FOR THE RESPONDENT