REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

HIGH COURT CRIMINAL APPEAL NO. 186 OF 2012

PETER NJONJO MUNGAI…….APPELLANT

VERSUS

REPUBLIC……..……..…….RESPONDENT

(Being an appeal from the judgment of the Hon. B.A. Owino (Senior Resident Magistrate)

in

Thika Chief Magistrate's Criminal Case No.774 of 2008 delivered on 12th March, 2010)

JUDGMENT

The appellant herein, Peter NjonjoMungai, was charged with handling stolen property contrary to section 322 (2) of the Penal Code. Particulars of the offence were that on the 24th day of March 2008 at Mithi Village in Muranga South District of Central Province otherwise than in the course of stealing dishonestly retained one pair of trouser, one pair of shoe, one coat and driving license knowing them to be stolen property. He was found guilty, convicted and sentenced to 8 years imprisonment. Under Amended Supplementary Grounds of Appeal he appealed both against the sentence and conviction.

The appeal was canvassed before me on the 4th of June 2015. The appellant changed his mind and submitted that he would proceed with the appeal as against the sentence only. He stated that he was remorseful and shall abide with the law upon his release.

Learned stated counsel M/s Kimiri did not oppose the appeal on noting that although the appellant was remorseful he had been in remand for two years before the conviction.

Under section 322 (2) any person who is found guilty of handling stolen goods upon conviction is liable to imprisonment with hard labour for a term not exceeding 14 years. Whereassentencing is in the discretion of the trial court such discretion must be exercised judiciously and taking into account the facts and circumstances of the case in totality.Asentence must also be commensurate with the offence and reflect the moral blameworthiness of the accused person. See**OmuseVs. Republic (2009) KLR, 2014**.TheCourt of Appeal in referring to **AmbaniVs.Republic (1990) KLR, 161** noted as follows:

> "**Further, the law is that sentence imposed on an accused person must be commensurate to the moral blameworthiness of the offender and it was thusnot proper exercise of discretion in sentencing for the court to have failed to look at the facts and circumstances of the case in their entirety before settling for any given sentence".**

The Court must also be careful not to apply the wrong principles in imposing the sentence; that is to say the same must not be excessive as not to serve the purpose for which it is intended. A trial court must always bear in mind that a sentence is aimed at reforming the offender and serve as a lesson so that the offender does not commit the offence again. The court must be cautious so that the sentence does not harden the offender.

In the instant case, although the penalty prescribed is stiff, the circumstances and facts of the case did not warrant an 8 years imprisonment term. **Firstly**, the appellant was a first offender. **Secondly**, the worth of goods he was found in possession of was so low and **Thirdly**, the mitigating factors he offered were reasonable. In my view, the sentence of 8 years was excessive in the circumstance. He was sentenced on the 12th of March 2010 and has therefore already served five years out of the 8 years imprisonment term. Even those five years he has served are already excessive given the facts of the case. The appeal must, in any event, succeed.

In the end, I hold that the appellant has served sufficient sentence and is forthwith set free.

DATED and **DELIVERED**at **NAIROBI**this **8th day of June 2015**.

G. W. NGENYE – MACHARIA

JUDGE

In the Presence of:

1. The appellant in person.

2. **M/s Atina** holding brief for **Mureithi**, for the respondent.