REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL APPEAL NO. 374 OF 2008

E O …….....……APPELLANT

VERSUS

REPUBLIC …… RESPONDENT

(From original conviction and sentence in Criminal Case Number 610 of 2006 in the Chief magistrate's court at Makadara before K. Muneeni (SRM) on 28th July, 2008)

JUDGMENT

The appellant E O was charged jointly with another in count I with the offence of Robbery with Violence contrary to Section 292 (2) of the Penal code. In count II he was charged jointly with another with the offence of theft of Motor vehicle parts contrary to Section 279 (g) of the Penal Code.

In the alternative to count II, the appellant was charged alone with the offence of handling stolen goods contrary to Section 322 of the Penal Code. He denied all the offences but after a full trial he was convicted of the offence of handling stolen goods contrary to Section 322 of the Penal Code.

At the time of conviction he was aged 14 years old and following a probation's officers report, he was placed on 3 years probation. Aggrieved by the said conviction and sentence he filed this appeal.

The evidence adduced before the learned trial magistrate was that the appellant was arrested alongside three adults while he was ferrying a motor vehicle gear box and a gurtridge. One of the adults escaped but two ended up with him at Huruma Police Post. Subsequently the two adults were released in circumstances that were not explained to the court.

The appellant explained in his defence that he was approached by one Victor Omondi to use the family wheelbarrow to ferry the said items. He was even promised Kshs. 100/=. The learned trial magistrate dismissed that defence saying that the appellant should have known the items were stolen. What the learned trial magistrate did not address himself to is how the minor should have known the said goods were stolen. His defence was also not contradicted by any other evidence adduced by the prosecution witnesses.

My assessment of the evidence is that the appellant gave a plausible explanation and the learned trial magistrate should not have dismissed his defence without giving good reasons.

The learned counsel for the republic concedes this appeal and with respect, I agree. The doctrine of recent possession did not connect the appellant with the offence at all. It was not possible for the appellant who was a minor to interrogate the adults who approached him to use the family wheelbarrow in this exercise. If anything the appellant should have been treated as a prosecution witnesses. There was no evidence whatsoever to justify the conviction of the appellant.

Accordingly this appeal is allowed, conviction quashed and sentence set aside.

Orders accordingly.

SIGNED DATED and **DELIVERED** in court this **11th** day of June **2014**.

A.MBOGHOLI MSAGHA

JUDGE