



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**CRIMINAL APPEAL NO. 184 OF 2011**

JOSEPH ABTALIA ..... APPELLANT

VERSUS

REPUBLIC .....RESPONDENT

(From original Conviction and Sentence in Criminal Case No. 214 of 2011 of the Senior Resident Magistrate's Court at Taveta – **Hon. C.N. Ndegwa - SRM**)

**JUDGMENT**

**JOSEPH ABTALIA** hereinafter referred to as the Appellant was Convicted and Sentenced to ten (10) years imprisonment on 1st and 3rd alternative counts of handling stolen property contrary to section 322(2) of the Penal Code. It was ordered that the Sentence do ran consecutively.

Section 37 of the Penal Code provides,

**“where a person after Conviction for an offence is Convicted of another offence, either before Sentence is passed upon him under the first Conviction or before the expiration of that Sentence, any Sentence, there than a Sentence of death, which is passed upon him under the subsequent Conviction shall be extended after the expiration of the former Sentence, unless the Court directs that it shall be executed concurrently with the former Sentence or any part thereof”.**

In the present case the handling of the stolen property though on two different dates was related to one case of burglary and stealing. The Sentences therefore ought to have run concurrently but not consecutively.

The Sentence is therefore varied and or altered to read concurrent sentence but not to run consecutively.

The effect is that the appellant will serve five years imprisonment but not ten years imprisonment.

To that extent only does this appeal succeed.

Judgment delivered dated and signed this **9th** day of **October, 2013**.

.....

**M. MUYA**

**JUDGE**

**9TH OCTOBER, 2013**

**In the presence of:-**

Learned state Counsel Miss Mwaura

The Appellant present

Court clerk Musundi