



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL APPEAL NO. 134 OF 2010

VERSUS

MWANZIA MUTISYA APPELLANT

(Being an appeal from the conviction and sentence of E. Juma Osoro SRM delivered on 11/6/2010 in Kitui Principal Magistrate Criminal Case No. 443 of 2010)

(Before Hon. B. Thurania Jaden J)

J U D G M E N T

1. The Appellant, **Mwanzia Mutisya**, was charged with the offence of being in possession of suspected stolen property contrary to **section 323** of the **Penal Code**.

The particulars of the offence were that on the 8th day of June 2010 at about 1.00 p.m. at **Kalundu market, Kalundu Sub-location, Township location in Kitui District** of the **Eastern Province**, was found in possession of 1 Kenya Power blue overall and 25 metres of service line cables reasonably suspected to have been stolen or unlawfully obtained.

- 2. When the Appellant was arraigned in court on 11/6/10, he pleaded guilty to the charge. The Appellant was convicted and sentenced to serve seven (7) years imprisonment.
- 3. The Appellant appealed to this court on the grounds that the sentence imposed was harsh and cruel.
- 4. The appeal was not opposed by the State. It was submitted that the offence is a misdemeanour.
- 5. **Section 323** of the **Penal Code** provides that the offence of being in possession or conveying suspected stolen property is a misdemeanour.
- 6. **Section 36** of the **Penal Code** provides as follows:-

“When in this Code no punishment is specially provided for any misdemeanour, it shall be punishable with imprisonment for a term not exceeding two years or with a fine, or with both.”

7. The sentence of seven (7) years is therefore unlawful. The Appellant has already served a prison term of more than two years. The appeal has merit and is allowed. The Appellant is at liberty unless otherwise lawfully held.

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B. THURANIRA JADEN

JUDGE

Dated and delivered at Machakos this 7th day of October 2013.

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B. THURANIRA JADEN

JUDGE