



**REPUBLIC OF KENYA**

**High Court at Nakuru**

**Criminal Appeal 400 of 2010**

**PETER KILONZO NTHENGE.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

***(From original conviction and sentence in Criminal Case No. 952 of 2009 of the Principal Magistrate's Court at Nyahururu)***

**JUDGMENT**

The Appellant was charged with the offence of robbery with violence contrary to Section 296 (2) of the Penal Code (*Cap. 63, Laws of Kenya*) and the alternative charge of handling stolen goods contrary to Section 322 (2) of the Penal Code.

He was, on the evidence, acquitted of the offence of robbery with violence but was found guilty of the alternative charge of handling stolen goods and sentenced to four years imprisonment. He has not challenged his conviction but has instead appealed against his sentence, saying that he has now served one year's imprisonment and that he has learnt his lesson and he is remorseful, and that his sentence should be reduced and if possible allow his appeal on sentence, and send him home a free man.

Miss Idagwa learned State Counsel who appeared for the Republic opposed the appeal on sentence and stated that this was a retributive sentence, it was both right and lenient.

The punishment for handling stolen property under Section 322(2) of the Penal Code is imprisonment with hard labour for a term of not exceeding fourteen years. The sentence of four years therefore appears very lenient. The learned trial magistrate does not say what influenced her decision in sentencing the appellant to four years imprisonment. However from the particulars of the offence, the total value of the goods handled amounted to Ksh 2,145/=. This is probably what influenced the learned trial court's decision.

For the same reasons a sentence of four (4) years for handling stolen property worth shs 2,145/= is rather harsh.

The Appellant was sentenced to four years imprisonment on 19<sup>th</sup> November 2010. He had however been in custody from about 10<sup>th</sup> April 2009, and that is a period of nearly two years from his arrest and placed in custody.

This court called for a Probation Report and from the Report Ref. PRI/VOL.VI/056, filed in court on 17<sup>th</sup> September 2012, the Appellant has been positively described and the Probation Officer recommends him for a non-custodial sentence.

We have considered the Report and accept its recommendation. We therefore direct that the Appellant be released from prison and direct that he does serve the balance of his term at **Maina Chief's Camp** in **Maina Location** under the direction of the Probation Officer Nyandarua North.

There shall be orders accordingly.

**Dated, signed and delivered at Nakuru this 9<sup>th</sup> day of October, 2012**

**R. V. P. WENDOH**

**JUDGE**

**M. J. ANYARA EMUKULE**

**JUDGE**