

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

Criminal Appeal 117 of 2007

**(From original conviction and sentence in Criminal Case No.37 of 2004 of the
Chief Magistrate's court at Naivasha – J. THUITA, PM)**

CHARLES KIMANI MBUGUA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

CHARLES KIMANI MBUGUA, the appellant, was with another charged with one count of capital robbery. He was alone also charged with two counts of capital robbery and being in possession of a firearm and ammunition without a Firearm Certificate contrary to **Section 4(1)** of the **Firearms Act**. He pleaded not guilty to all the charges but upon trial before the Principal Magistrate at Naivasha he was acquitted of the capital robbery charges but convicted of the charges of being in possession of a firearm and ammunition and sentenced to ten and five years imprisonment respectively. The sentences were ordered to run concurrently. He has appealed against both convictions and sentences.

At the hearing of his appeal, the appellant abandoned the appeal against conviction and pleaded for the reduction of sentence. He submitted that at the material time he was young an immature and was led into the crime by his peers. He has since learnt his lesson and vows not to be involved in any criminal activity. He said in prison he has done Theology and upon his release he wants to go and preach the gospel of salvation. He is a young man of 40 years who has been left with three children his wife having run away after his arrest.

Mr. Njogu for the state submitted that considering the seriousness of the offences, the manner in which the appellant committed them and the fact that the maximum sentences of the offences he was convicted of is 15 years imprisonment, he urged me to dismiss the appeal in its entirety.

I have considered these submissions. It is true as Mr. Njogu submitted that the offences the appellant committed are indeed very serious and they carry a maximum sentence of 15 years imprisonment. However, considering the fact that the appellant is a young man aged only 40 years with three young children and that he has been incarcerated since 24th December 2003, a period of about 6 years now, I find that he has had enough punishment. Consequently I reduce his imprisonment to a term that will secure his immediate release. The appellant shall therefore be released forthwith unless otherwise lawfully held.

DATED and delivered this 3rd day of November, 2009.

D. K. MARAGA

JUDGE.