

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

CRIMINAL APPEAL NO 145 OF 1982

KIURIO M'MURURU APPELLANT

VERSUS

REPUBLIC RESPONDENT

JUDGMENT

The appellant was convicted on two counts:

1. Theft of a bicycle contrary to Section 275 of the Penal Code (Cap 63) and
2. Robbery contrary to Section 276(1) of the Penal Code. On the first count he was sentenced to three years' imprisonment and on the second count he was sentenced to three years' imprisonment with four strokes of the cane. The sentences were ordered to run concurrently.

As regards the first count there was overwhelming evidence against the appellant. The offence was committed at about 3.00 pm. The appellant was seen stealing the bicycle. He was properly convicted. The sentence of three years' imprisonment was the maximum sentence under Section 275 of the Penal Code. Although the appellant had a poor record of five previous convictions I am of the view that maximum sentence ought not to have been awarded. Hence I reduce the sentence on count one from three years to eighteen months imprisonment. As regards the second count of robbery we have clear evidence from the complainant and his sister. They both knew the appellant and recognized him during the robbery. They both knew the appellant and recognized him during the robbery. The question of mistaken identity does not arise. The appellant was properly convicted. The sentence of three years' imprisonment with four strokes of the cane is not excessive in view of the circumstances of this case. Hence, appeal is dismissed in respect of the second count. The sentence on first count will of course run concurrently with the sentence on the second count. Order accordingly.

Delivered at Nyeri this 8th day of December, 1982

E O'KUBASU

JUDGE.