



IN THE COURT OF APPEAL

AT KISUMU

CRIMINAL APPEAL NO. 47 OF 2014

CORAM: (MUSINGA, GATEMBU & MURGOR, JJ.A.)

BETWEEN

ADNAS KHAYEMBA APPELLANT

AND

REPUBLIC RESPONDENT

(Appeal from the judgment of the High Court Of Kenya at Kakamega (Chitembwe, J.) dated 19th March, 2014

in

H.C.CR.A NO. 173 OF 2011

JUDGMENT OF THE COURT

1. The appellant was arraigned before the Senior Resident Magistrate's Court at Mumias where he faced two counts of robbery with violence contrary to **section 296 (2)** of the **Penal Code** and an alternative charge of handling stolen goods contrary to **section 322** of the **Penal Code**. The appellant also faced three counts of gang rape contrary to **section 10** of the **Sexual Offences Act**. He was convicted on all the main counts and sentenced to death as by law provided.
2. The appellant was dissatisfied with the said conviction and sentence and appealed to the High Court at Kakamega, (Chitembwe and Dulu, JJ). The learned judges held that there was insufficient evidence to convict the appellant for robbery with violence and gang rape but found him guilty of the alternative charge of handling stolen goods. The death sentence was therefore set aside and substituted with a sentence to ten years' imprisonment for the offence of handling stolen goods.
3. The appellant's appeal to this Court is against sentence only. The appellant, who appeared in person, argued that the sentence was quite severe and urged the Court to reduce it.
4. **Mr. Ketoo** for the respondent urged the court not to interfere with the sentence, which he said was lawful.
5. **Section 361 (1) (a)** of the **Criminal Procedure Code** states as follows:

“A party to an appeal from a subordinate court may, subject to sub-section (8), appeal against a decision of the High Court in its appellate jurisdiction on a matter of law, and the Court of Appeal shall not hear an appeal under this section-

(a) on a matter of fact, and severity of sentence is a matter of fact.”

6. As this appeal is entirely based on severity of the sentence that was passed by the High Court, we have no jurisdiction to hear the appeal. Consequently, the appeal is struck out.

DATED and delivered at Kisumu this 6th day of November, 2015

D. K. MUSINGA

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JUDGE OF APPEAL

S. GATEMBU KAIRU

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JUDGE OF APPEAL

A. K. MURGOR

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JUDGE OF APPEAL

I certify that this is

a true copy of the original.

DEPUTY REGISTRAR