



**IN THE COURT OF APPEAL
AT ELDORET
(CORAM: GICHERU, C.J., BOSIRE & ONYANGO OTIENO, J.J.A.)**

CRIMINAL APPEAL NO. 51 OF 2010

BETWEEN

**MICHAEL MURASIA ALIAS CHOTOI DAVIDAPPELLANT
AND**

REPUBLICRESPONDENT

**(Appeal from an order of summary rejection of the High Court of Kenya at Eldoret (Ombija, J.) dated
16th February, 2010**

in

H.C.CR.A. NO. 61 OF 2009)

JUDGMENT OF THE COURT

The appellant *Michael Murasia alias David Chotoi*, whom we shall hereinafter refer to as the appellant, was charged with two counts before the Principal Magistrate's Court at Kapenguria, the first one being stealing from the person contrary to **section 279 (a)** of the Penal Code. The second count was one of malicious damage to property contrary to **section 339 (1)** of the same Code. He pleaded guilty to both counts, and he was thereafter sentenced to concurrent terms of 7 years and 3 years imprisonment respectively. His first appeal to the superior court was rejected summarily under **section 352 (2)** of the Criminal Procedure Code and hence this appeal. In this appeal the appellant's main complaint is that the sentences imposed upon him are too harsh and he prays that we reduce them. It was his submission that this Court should exercise its powers in his favour and consider reducing the sentences.

Mr. Oluoch, Senior Principal Counsel opposes the appeal basing his submission on the provisions of **section 361 (1) (a)** of the Criminal Procedure Code. Under that section no second appeal against severity of sentence may properly be entertained by this Court. In his view therefore this Court lacks jurisdiction to hear this appeal.

The appellant in reply submitted that it is his constitutional right to bring an appeal to this Court and in his view therefore the Court should exercise its powers and reduce the sentences against him.

We have carefully considered the appellant's appeal. The appellant is not challenging his conviction on the aforesaid two counts. His appeal both to the superior court and to this Court is confined to severity of sentence. Under **section 352 (2)** aforesaid the superior court had the power to summarily dismiss the appellant's appeal if the sentences meted out were within the law and did not appear to be manifestly excessive. The superior court having looked at the sentences which were meted against the appellant quite properly ruled that the appellant's appeal was without any proper basis and was frivolous. We find no basis for differing with that court. Besides this being a second appeal, we would not have jurisdiction to entertain it in view of the clear provisions of **section 361 (1) (a)** of the Criminal Procedure Code. That being our view of the matter, this appeal is clearly for dismissal.

But the appellant has submitted that he should be allowed, to exercise his constitutional right of appealing to this Court. As the power of this Court is circumscribed by statute our hands are tied, and we

cannot but dismiss the appellant's appeal for want of jurisdiction. It is so ordered.

Dated and delivered at Eldoret this 15th day of February, 2011.

J. E. GICHERU

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CHIEF JUSTICE

S.E.O. BOSIRE

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JUDGE OF APPEAL

J. W. ONYANGO OTIENO

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR