



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KISII
CRIMINAL APPEAL 181 OF 2005
CHARLES OTIENO MUOK.....APPELLANT
VERSUS
REPUBLIC.....RESPONDENT

(From original conviction and sentence in Senior Resident Magistrate's Court Oyugis

in Criminal Case No.423 of 2003 by S. O. Omwenga Esq., S.R.M)

JUDGMENT

The appellant was convicted of handling stolen property contrary to **section 322(2)** of the **Penal Code**. The particulars of the offence were that on the 13th day of June 2003 at Oyugis Township in Rachuonyo district, otherwise than in the course of stealing, the appellant dishonestly retained one radio, belt, one dotted shirt and two hair bands, knowing or having reason to believe them to be stolen.

After a full trial he was found guilty and sentenced to 7 years' imprisonment. The evidence on record shows that on the material day at about mid night, **William Otieno Njoga, PW1**, was asleep in his house when he heard a knock on his main door. Those who were knocking the door identified themselves as police officer who were looking for a suspect who had fled. They ordered PW1 to open the door which he did. PW1 said that he recognized the appellant who was with one other person. They assaulted him and robbed him of Kshs.1200/= and the aforesaid items. The matter was reported to the police but the complainant did not tell the police that one of the people who robbed him was the appellant.

On 13th June 2003, PW1, met Albert Oginga Siwo (deceased) selling some of the items that he had been robbed of. The said Albert Siwo was arrested and taken to a police station. He told the police that he had been given the items to sell by the appellant. PW1 and the police proceeded to the appellant's house and upon conducting a search therein they recovered some of the stolen items belonging to PW1.

The evidence of PW1 was corroborated by **Naftali Omolo Owino, PW3**. Police **Constable Edwin Wawire, PW4**, testified about arrest of the appellant and his deceased co-accused.

The appellant denied having been found in possession of the stolen items.

From the evidence on record, it is clear that the appellant was found in possession of some of the items that PW1 had been robbed of. The police were led to the appellant's house

by the person who was found selling the same. The appellant did not give any explanation as to how he came to be in possession of the said items. His defence was a mere denial. I am satisfied that the appellant's conviction was safe and I dismiss his appeal against conviction.

As regards sentence, it was not demonstrated that the same was harsh or excessive. However, I note that the appellant has been in custody since 13th June, 2003. He is in poor health. In the circumstances, I am inclined to allow his appeal against sentence. I set aside the sentence of seven (7) years' imprisonment and substitute therefor a sentence for the period already served. The appellant is set at liberty unless otherwise lawfully held.

DATED, SIGNED and DELIVERED at KISII this 28th day of July, 2008.

D. MUSINGA

JUDGE

Delivered in open court in the presence of:

The Appellant.

Mr. Kemo, Senior Principal State Counsel for the Republic.

D. MUSINGA

JUDGE