



REPUBLIC OF KENYA



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**Njuguna v Republic (Criminal Appeal E019 of 2022)
[2023] KEHC 19647 (KLR) (30 June 2023) (Judgment)**

Neutral citation: [2023] KEHC 19647 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CRIMINAL APPEAL E019 OF 2022
JN ONYIEGO, J
JUNE 30, 2023**

BETWEEN

MADARAKA KAPOSHA NJUGUNA APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal From the Original Conviction and Sentence of Hon. C.I. ADISA - Resident Magistrate in Criminal Case No. E312 of 2021 of The Principal Magistrate's Court at Voi)

JUDGMENT

1. The appellant herein was arraigned before Taveta Principal Magistrate' court on 27th August, 2021 facing the offence of handling stolen goods contrary to Section 322(1) of the *Penal Code*. Particulars were that on the 25th August, 2021 at Ndilidan village Salaila area, Taveta Sub-county, within Taita Taveta County stole the following items: (i) the railway clip, (2) six sol plates all valued at Kshs 16,000/=, knowing or having a reason to believe them to be stolen.
2. He was also charged with an alternative count of stealing contrary to section 268 as read with section 275 of the *Penal Code*. Particulars were that on the 25th August, 2021 at Ndilidan village Salaila area Taveta Sub-county, within Taita Taveta County stole the following items: (i) railway clip (2) six sol plates all valued at Kshs 16,000/= the property of Kenya Railways.
3. After returning a plea of not guilty, the matter proceeded to full trial. Upon conclusion of the trial, the appellant was convicted of the alternative count. He was consequently sentenced to serve 14 years' imprisonment on 29th November, 2021.
4. Aggrieved by the gravity of the sentence, the appellant moved to this court on appeal through what is referred to as mitigation grounds of appeal filed on 7th April, 2022. The Appellant's contention is



that he should be given a lesser severe sentence. That he was a first offender and a young man. That the court did not consider the fact that he was remorseful.

5. In his submissions filed on 23rd August, 2022 the appellant reiterated the grounds of appeal thus stating that the sentence was excessive in the circumstances; he is remorseful; he is 24 years old and hence a productive man in society; that he is an orphan in need of protection, care and counselling; the court did not take into account the period spent in remand custody and that he needs time to take part in building society.
6. In response, the state filed its submissions on 15th September, 2022 opposing the appeal. Counsel submitted that the sentence meted out was lawful and the appellant was a repeat offender.
7. Counsel further submitted that sentencing is a matter of discretion of the trial court hence this court cannot interfere with it unless found to be excessive or wrong principles were applied. To support that position the court was referred to the case of: *Vitalis Okoth Omondi & 2 others v Republic* (2019) eKLR.
8. I have considered the grounds of appeal herein together with submissions thereof. The appeal herein is challenging sentence which according to the appellant was excessive considering that the appellant is a young man, very remorseful and that the period spent in remand custody was not considered.
9. The penalty prescribed for having stolen property under Section 322 (2) of the *Penal Code* is an imprisonment term not exceeding 14 years. The appellant was given the maximum sentence which the respondent admits was excessive in the circumstances.
10. It is trite law that sentencing is a discretionary power bestowed upon a trial court which the appellate court can only interfere with if it finds that it is excessive; the trial court applied wrong principles or took into consideration irrelevant factors: See *Shadrack Kipkoech Kogo v Republic* Eldoret Criminal Appeal No 253 of 2003 Court of Appeal.
11. Under the Judiciary Sentencing Policy or Guidelines, one of the key factors for consideration is whether the penalty imposed is proportionate to the offence committed.
12. In the instant case, the goods the appellant was found in possession of were worth Kshs 16,000/= . In all fairness, the sentence of 14 years was far too excessive. I do agree with the appellant that he deserved a much lesser sentence. Equally, he deserved consideration of the period spent in remand custody although not long.
13. Having taken into account the seriousness of the offence and the proportionality principle, the sentence of 14 years is hereby set aside and the same reduced to the period already served. The appellant shall be set free forthwith unless otherwise lawfully held.

DATED, SIGNED AND DELIVERED AT VIRTUALLY AT GARISSA THIS 30TH DAY OF JUNE, 2023.

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J.N. ONYIEGO

JUDGE

