



REPUBLIC OF KENYA



KENYA LAW
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**Maruti v Republic (Criminal Appeal E094 of 2022)
[2023] KEHC 26164 (KLR) (28 November 2023) (Judgment)**

Neutral citation: [2023] KEHC 26164 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CRIMINAL APPEAL E094 OF 2022
REA OUGO, J
NOVEMBER 28, 2023**

BETWEEN

PROTUS MARUTI APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal from the original conviction and sentence by Hon. C.M. Manasses (SRM) in Sirisia RM's Criminal Case No.429 of 2022 delivered on 14/11/2022)

JUDGMENT

1. The appellant, Protus Maruti, was on his own plea of guilty convicted of the offence of cutting down cultivated crop produce contrary to section 334 (a) of the [Penal Code](#) and sentenced to serve 5 years imprisonment. The particulars of the offence were that on the 10th day of November 2022 in Lwandanyi area, Bungoma West Sub-County within Bungoma County wilfully and unlawfully cut down crops of cultivated produce namely spider plant (sagaa) valued at Kshs. 112,500/- the property of Ronald Wanjala. The appellant was aggrieved by the conviction and the sentence and filed the instant appeal.
2. The grounds on the face of the petition of appeal filed before the court on 23/11/2022 were as follows:
 1. That I am a first offender.
 2. That I am remorseful for the offence committed.
 3. That the sentence meted out against me was harsh and excessive as per the circumstances.
 4. That I was not warned of the dangers of pleading guilty to such an offence.
 5. That being my first time of arrest I was out of my mind and therefore under the influence of the police officers.



6. That the learned trial magistrate applied a wrong principle in sentencing the appellant notwithstanding the mitigating factors that could create room for the court's discretion.
7. That I will adduce more grounds at the hearing of this.
3. The appeal was canvassed by way of written submissions. The appellant submits that he is not challenging the verdict of the trial court but is seeking leniency in the sentence. He submits that Article 22 of *the Constitution* of Kenya allows that he goes before the relevant magistrate court for a review hearing of the criminal case. The appellant advanced that he is a breadwinner in his family and currently has no pending case in any court. He argues that he is a first offender and prays that the court grants him a lesser sentence and considers the period in custody before his conviction.
4. The respondent filed submissions dated 30th November 2023. They argue that the trial court complied with the procedure laid down in section 207 of the *Criminal Procedure Code*. The appellant's plea was unequivocal. They concede that an accused person convicted on his own plea of guilt may only be allowed to lodge an appeal on sentence. The court in sentencing the appellant considered his mitigation and took into account the contents of the presentencing report. The appellant was a repeat offender. The sentence was therefore proper in law and the court should not interfere with the sentence.
5. In this case, the appellant in his submissions abandoned his appeal on conviction and only challenged the sentence meted by the trial magistrate. An appellate court will not normally interfere with a sentence unless the sentence is manifestly excessive or is based on wrong principles or law. The Court of Appeal in *Bernard Kimani Gacheru v Republic [2002]* eKLR stated that:

“It is now settled law, following several authorities by this Court and by the High Court, that sentence is a matter that rests in the discretion of the trial court. Similarly, sentence must depend on the facts of each case. On appeal, the appellate court will not easily interfere with sentence unless, that sentence is manifestly excessive in the circumstances of the case, or that the trial court overlooked some material factor, or took into account some wrong material, or acted on a wrong principle. Even if, the Appellate Court feels that the sentence is heavy and that the Appellate Court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial court on sentence unless, anyone of the matters already stated is shown to exist.”

6. In this case, the appellant was liable to 14 years imprisonment as the offence committed was a felony. Section 334 of the *Penal Code* provides that:
 334. Setting fire to crops, etc.

Any person who wilfully and unlawfully sets fire to, cuts down, destroys or seriously or permanently injures—

 - (a) a crop of cultivated produce, whether standing, picked or cut; or
 - (b) a crop of hay or grass under cultivation, whether the natural or indigenous product of the soil or not, and whether standing or cut; or
 - (c) any standing trees, saplings or shrubs, whether indigenous or not, under cultivation,is guilty of a felony and is liable to imprisonment for fourteen years.
7. The trial court called for a pre-sentence report. The pre-sentence report noted that the appellant had a previous conviction on record in Criminal Case No E142 of 2022 where he was convicted of assault and placed to serve a community service order for a period of 6 months. According to the report by his



supervising probation officer, the accused never reported to the work agency and declined to adhere to the guidelines of the community service order as expected. The report recommended that the appellant was not suitable to serve a non-custodial sentence. The appellant in his mitigation asked for leniency and explained that he uprooted the crops so that he could feed his children.

8. I have considered the evidence on record, the mitigation by the appellant, and the pre-sentence report. The offence attracts an imprisonment of up to 14 years and the trial court sentenced the appellant to a 5-year sentence based on the circumstances before him. Consequently, I find that the sentence herein cannot be said to be manifestly excessive or based on wrong principles. The sentence was lawful and I find no legal basis to interfere with the sentence imposed by the trial court. The appeal is hereby dismissed.

DATED, SIGNED, AND DELIVERED AT BUNGOMA VIA MICROSOFT TEAMS THIS 28TH DAY OF NOVEMBER 2023.

R.E. OUGO

JUDGE

In the presence of:

Appellant in person

Respondent -Absent

Wilkister -C/A

