



**Republic v Momanyi (Anti-Corruption and Economic Crimes  
Appeal E019 of 2021) [2022] KEHC 14484 (KLR) (Anti-  
Corruption and Economic Crimes) (27 October 2022) (Judgment)**

Neutral citation: [2022] KEHC 14484 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
ANTI-CORRUPTION AND ECONOMIC CRIMES  
ANTI-CORRUPTION AND ECONOMIC CRIMES APPEAL E019 OF 2021  
EN MAINA, J  
OCTOBER 27, 2022**

**BETWEEN**

**REPUBLIC ..... APPELLANT**

**AND**

**STANLEY ONESMUS MOMANYI ..... RESPONDENT**

*(Being an appeal from a judgment delivered by Hon. T. Nzyoki  
Senior Principal Magistrate on 30th November, 2021 in Chief  
Magistrates Anti-Corruption Court Criminal Case No. E016 of 2021)*

**JUDGMENT**

1. This is an appeal by the State against the sentence imposed upon the respondent on two counts of Giving a Bribe contrary to Section 5 (1) as read with Section 18(1), (2) of the [Bribery Act](#). The particulars of the charges were:-

“COUNT 1: Giving a bribe, contrary to Section 5(1) as read with Section 18(1), (2) of the [Bribery Act](#) No 47 of 2016.

Particulars of offence: Stanley Onesmus Momanyi: On September 19, 2019 at National Transport and Safety authority Headquarters within Nairobi City County, being the Chairman of Kitengela minibus Sacco, offered a bribe of Kshs 20,000/= to Hared Adan, the Deputy Director National Transport and Safety Authority, in charge Licencing with intent, in consequence that he would forbear suspending your Sacco from operation, a matter in which the said public body was concerned.



COUNTE Giving a bribe, contrary to section 5(1) as read with section 18(1), (2) Of The  
II: Bribery Act No 47 Of 2016.

Particulars of the offence - Stanley Onesmus Momanyi – On September 19, 2019 at National Transport and Safety Authority Headquarters within Nairobi City County, being the Chairman of Kitengela minibus Sacco, gave a bribe of Kshs 20,000/- to Hared Hassan Adan, the Deputy Director National Transport and Safety Authority, in-charge Licencing with intent, in consequence that he would forbear suspending your Sacco from operation, a matter in which the said Public body was concerned.”

2. The grounds of appeal are that: -

- “(1) That the learned trial magistrate erred in law and in fact by sentencing the respondent to pay a fine of Kshs 20,000 for each of the two counts a sentence that was too lenient in the circumstances.
- (2) That the learned magistrate erred in law by failing to consider the weight of the evidence against the respondent as was stated in the facts.”

3. By this appeal this court is urged to enhance the sentences.

4. The record of the trial court indicates that the sentence was imposed following a plea of guilty by the Respondent. The plea was recorded on November 30, 2021 when the Respondent informed the court that he wanted to change his plea. After considering the respondent’s plea in mitigation the trial magistrate sentenced the Respondent to a fine of Kshs 20,000/- or 6 months’ imprisonment on each count. It is the State/Appellant’s contention that the sentences were very lenient and not commensurate to the offences as the sentence prescribed by Section 18(1) of the Bribery Act is a term not exceeding 10 years or to a fine not exceeding Kshs 5 million or both. Learned Prosecution Counsel Ms Ndombi in her oral submissions, urged this court to enhance the sentence considering the effect the offence has on the public.

5. The Respondent vehemently opposed the appeal. He narrated how he entered into plea bargain negotiations with the State which did not however materialise. He beseeched this court to treat him with leniency saying he was a first offender; that he had undergone a lot of tribulations due to the case and that he can no longer fend for his family and has to depend on his sister. He stated that when he was arrested his family was adversely affected and that his father died upon learning of the arrest.

6. The power of this court to entertain an appeal against a sentence stems from Section 348 of the Criminal Procedure Code which states:-

- “348. No appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on that plea by a subordinate court, except as to the extent or legality of the sentence.”

7. The Appeal before this court is on the extent of sentence and is therefore properly before it.

8. Section 354(2)(b) of the Criminal Procedure Code provides that in an appeal against sentence this court has power to increase or reduce the sentence or alter the nature of the sentence. Be that as it may the superior courts have in a long line of cases acknowledged that sentencing is at the discretion of the



trial court and an appellate court ought not interfere unless there are reasonable grounds to do so. The guiding principles were stated as follows in the case of *Wanjema v Republic* [1971] EA 493:-

“An appellate court should not interfere with the discretion which a trial court has exercised as to sentence unless it is evidence that it overlooked some material factor, took into account some immaterial factor, acted on a wrong principle or the sentence is manifestly excessive in the circumstances of the cases.”

9. In the case of *SV Machunu & another (AR24/11) [2012] ZAKZPHC* cited with approval in the case of *Patrick Malombe Masaku v Republic* [2019] eKLR the Court of Kwazulu Natal stated:-

“It is trite law that the issue of sentencing is one which vests a discretion in the trial court. The trial court considers what a fair and appropriate sentence should be. The purpose behind a sentence was set out in *S v Scott-Crossly* (10 SACT 223 (SCA) at paragraph 35:-

“plainly any sentence imposed must have a deterrent and retributive force. But of course one must not sacrifice an accused person on the altar of deterrence. Whilst deterrence and retribution are legitimate elements of punishment, they are not the only ones, or for that matter, even the over-riding ones.”

..... It is true that it is in the interest of justice that crime should be punished. However, punishment that is excessive served neither the interests of justice nor those of society.”

10. When it comes to the sentencing, the courts draw guidance from the Sentencing Policy. Primarily the objective of sentencing is to punish, rehabilitate, reform and to deter other would be offenders. Each offender is sentenced based inter alia, on the nature of the case, the facts of the case, circumstances of the case, the law, age of the offender, the antecedents of the offender, the effect of the offence on the victim and community, the offender's attitude towards the offence. Although there is a desire for uniformity in sentencing the courts are enjoined to take into account evidence that may affect the sentence as not every case is like the other (See Section 329 of the *Evidence Act*). The interest of the public must always be balanced with the rights of the offender and where an accused has pleaded guilty and hence “saved the court's time” so to speak he/she would expect to be treated with leniency.
11. The Respondent in this case pleaded guilty on the two counts. The circumstances of the case were that he had offered a bribe of Kshs 20,000/= to an officer of the National Transport and Safety Authority so that he could forebear charging his (Respondent's) Sacco. The Prosecution Counsel in conduct of the case then informed the court that the Respondent was a first offender. In his plea in mitigation the respondent expressed remorse and promised not to reoffend. The trial magistrate considered all the above in arriving at the sentence. It is indeed correct that Section 18(1) of the *Bribery Act* provides for a much stiffer sentence but it is my finding that the trial magistrate properly applied the correct principles in sentencing the Respondent and as such there is nothing to warrant this court to interfere. To do so would be tantamount to merely substituting the sentence with what I myself would have imposed had I been the one trying the case and that is not permissible.
12. In the upshot the appeal against sentence is found to have no merit and it is dismissed.

**SIGNED, DATED AND DELIVERED VIRTUALLY ON THIS 27<sup>TH</sup> DAY OF OCTOBER, 2022.**

**E N MAINA**

**JUDGE**

