



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

CRIMINAL APPEAL NO.16 OF 2016

ROBERT ONKOBA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal from the sentence of 10 years imprisonment by Hon. J. Ndururi (PM) in Kericho CMCC No.2753 of 2016 delivered on 15/8/2016)

JUDGEMENT

1. The Appellant herein ROBERT ONKOBA was charged with four others with the offence of preparation to commit a felony contrary to section 308 (1) of the Penal Code.
2. The Appellant and his co accused pleaded guilty to the charge.
3. The particulars of the charge were that on 12/8/2016 at 03:00hrs the Appellant and his co-accused person were found armed with crude weapons at Miti Kubwa Area in Kericho Sub-county within Kericho County in circumstances that indicated that they were so armed with intent to commit a felony namely breadking and stealing.
4. The facts of the charge as given by the prosecutors were as follows;

“On 28/8/16 at about 2.00a.m, police officers from Nyagacho Police station received information that some people were hiding in a house under construction in Miti Kubwa area. The officers went there immediately and found the 5 accuseds. They ordered them to surrender. A quick search revealed that accused 1 was armed with a folded paperbag containing 7 master keys and a wheel spanner. The folded paper bag was produced as an exhibit (P. Exhibit – 1) and spanner (P.Exhibit – 1). Accused 2 had a claw hammer and a pair of pliers (P. Exhibit – 2 and 4 respectively). Accused 3, accused 4 and accused 5 had one panga each. Here are the 3 pangas (P. Exhibit – 5, 6 and 7 respectively). All of them were arrested and the said items recovered. They were escorted to Nyagacho police station and charged in this case”.
5. The Appellant with the others were convicted on their own plea of guilt and they were sentenced to 10 years imprisonment each.
6. The Appellant has now appealed against the sentence on the ground that the same is harsh to him as he is a first offender.
7. The Appellant also stated that he was misled by the police to plead guilty and further that he is a first offender and he was not conversant with the language in court.
8. The Respondent opposed the appeal and stated that the Appellant is not a first offender as he had two previous convictions one of which was relevant.
9. I find that the Appellant pleaded guilty to the charge of preparation to commit a felony and he has no right of appeal except against the sentence.
10. I have perused the original record and I find that the plea was taken in accordance with the law and the same is unequivocal.
11. The Appellant stated in his mitigation memorandum filed in court that he is a first offender but in his submissions in court he did not deny that he has previous records. He said that the sentence of 10 years imprisonment is harsh and excessive.
12. The appeal was initially summarily dismissed but the order dismissing the appeal was set aside.

13. The appeal is only against sentence. In the case of **Bernard Kimani Gacheru V Republic [2002] eKLR** the court held as follows;

“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”.

14. I find that the Trial court did not take into account the fact that the Appellant saved the court’s time by entering a plea of guilty.

15. The Appellant has been in custody since 15/8/2016, a period of almost five years and if he has not reformed his character then nothing else will teach him.

16. The period the Appellant has been incarcerated is sufficient to teach him that crime does not pay.

17. I accordingly reduced the 10-year sentence to the period already served.

18. I order that the Appellant be set free unless lawfully held for any other reason.

DELIVERED, SIGNED AND DATED AT KERICHO THIS 22ND DAY OF MARCH 2021.

A. N. ONGERI

JUDGE