



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIVASHA

(CORAM: R. MWONGO, J)

CRIMINAL APPEAL NO. 27 OF 2019

JOSEPH KARIUKI THUO.....APPELLANT

-VERSUS-

REPUBLIC.....RESPONDENT

(Being an appeal against the judgment of Hon. K. Bidali (CM))

delivered on 7th August, 2019 in Naivasha CMCR No 1317 of 2016)

JUDGMENT ON SENTENCING

1. This court, on appeal, found the accused guilty of robbery and quashed the convictions on all other charges against the accused. The court therefore convicted the accused with robbery contrary to **Section 295** as read with **Section 296 (1)** of the **Penal Code**.
2. Following the conviction, the court set a date for mitigation and directed that the Probation office do avail a pre-sentence report.
3. On the date set for mitigation, the accused stated as follows in mitigation:

“I apologise to court for my guilt. I have a family and seek that I serve a non-custodial sentence. I will not report such an offence again.”

4. The Probation Officer’s pre-sentence Report is as follows in significant aspects:

“.....Prior to his arrest, the appellant was abusing alcohol and smoking cigarettes.

The appellant is currently of good mental and physical health.

.....

The appellant pleads for the court’s leniency. He says that he has learnt a lesson after being in custody for close to 5 years and will not repeat the same mistake again.

The area chief in Maai Mahiu said that he knew of the incident. He said that the appellant had never had a pervious report of misconduct. He added that when the incident occurred there intolerance towards the appellant. However since time has passed so far there is no intolerance among community members. The appellant’s family prays for his release. They say that this will enable him support his young son. So far they contribute for his upkeep. They added that they will support in reintegration and also ensure that he complies with court orders.

The complainant’s views could not be gathered during the time of inquire. Their contacts were gathered from the lower court file. The complainant, Esther Muthoni’s phone did not go through. The other complainant, Branice Luyayi, one telephone contact went unanswered while the second contact did not go through.

.....

The appellant is a 30 year old man who is also a first offender. The appellant has a young family. His son is 8 years old currently in custody of her maternal grandmother. He was the sole breadwinner. The appellant is remorseful. He says he realised his wrong doing and has reformed. He will not repeat the same again. He has a supportive family. They say that they will cooperate in the rehabilitation plan put in place for the appellant. They will also ensure that he complies with court orders. The appellant stayed in remand for 3 years during the trial period.

From assessment, the appellant may have had negative peer influence and was also over indulging in alcohol. He says he has now disconnected and will not go back to Maai Mahiu. He will relocate to Kimende where part of his family is. This will enable him to start life a fresh.

A non-custodial sentence may be beneficial to the appellant. A rehabilitation plan will be put in place in line with the areas identified as push factors. He will also be reintegrated back to the community and supervised to ensure that he does not re-offend.

Your honour, in view of the above findings, I find the appellant fit for a non-custodial sentence. I therefore recommend that he be given a chance to serve a community service sentence at the Rukuma Dispensary in Kimende.”

I have carefully considered the mitigation of the accused and the Probation Report. I have also considered the Judiciary Sentencing Policy.

6. The objects of sentencing are as set out in the Sentencing Policy as follows:

“1. Retribution: To punish the offender for his/her criminal conduct in a just manner.

2. Deterrence: To deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.

3. Rehabilitation: To enable the offender reform from his criminal disposition and become a law abiding person.

4. Restorative justice: To address the needs arising from the criminal conduct such as loss and damages. Criminal conduct ordinarily occasions victims’, communities’ and offenders’ needs and justice demands that these are met. Further, to promote a sense of responsibility through the offender’s contribution towards meeting the victims’ needs.

5. Community protection: To protect the community by incapacitating the offender.

6. Denunciation: To communicate the community’s condemnation of the criminal conduct.”

7. I have further taken into consideration the fact that the accused has spent about two (2) years in jail upon being sentenced on 7th August, 2019 after a long three (3) years trial period.

8. I think the appropriate sentence, which I hereby mete, is as follows:

a. The appellant is sentenced to a further one (1) year imprisonment from today.

b. Should he maintain good conduct during that period as shall be certified by the Prisons Officer in Charge, he shall be released to serve a three (3) year non-custodial sentence as follows:

i. The Probation Officer shall prepare a rehabilitation programme for the accused for the probation period. Such programme shall be shared with the Prisons Service and may be called for by the Court;

ii. The Probation Officer shall facilitate the accused in effecting or undertaking the probation programme which may include probation service at Rukuma Dispensary, Kimende;

iii. Should the accused fall afoul of the law during the first two (2) years of the Probation Period, he shall be liable to serving the remainder of his sentence in prison.

c. The Prisons Service and the Probation Officer shall respectively maintain a record of the accused person’s progress in prison and upon release on probation, which records may be demanded by the court.

Administrative directions

9. Due to the current inhibitions on movement nationally, and in keeping with social distancing requirements decreed by the state due to the Corona-virus pandemic, this Judgment has been rendered through Teams tele-conference with the consent of the parties noted hereunder, who were also able to participate in the conference. Accordingly, a signed copy of this judgment shall be scanned and availed to the parties and relevant authorities as evidence of the delivery thereof, with the High Court seal duly affixed thereon by the Executive Officer, Naivasha.

10. A printout of the parties' written consent to the delivery of this judgment shall be retained as part of the record of the Court.

11. Orders accordingly.

DATED AND DELIVERED IN NAIVASHA BY TELECONFERENCE THIS 30TH DAY OF SEPTEMBER, 2021

R. MWONGO

JUDGE

Attendance list at video/teleconference:

1. Ms Maingi for the State
2. Appellant - Joseph Kariuki Thuo - Naivasha Max Prison
3. Court Assistant - Quinter Ogutu