



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

APPELLATE SIDE

(Coram: Odunga, J)

CRIMINAL APPEAL NUMBER 108 OF 2019

PETER IVITA MAINGI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(From original conviction and sentence in Mavoko Chief Magistrate's Court Criminal Case 227 of 2015, Hon. E. K. Too SRM on 16th July, 2015)

BETWEEN

REPUBLIC.....PROSECUTOR

VERSUS

PETER IVITA MAINGI.....ACCUSED

JUDGEMENT

1. The appellant, **Peter Ivita Maingi**, was charged before Mavoko Chief Magistrate's Court Criminal Case 227 of 2015 with the offence of Vandalism of Electrical Apparatus Contrary to Section 64(4)(b) of the **Energy Act**, No. 12 of 2012.

2. On 16th July, 2015, he pleaded guilty to the charge and was convicted accordingly. In what the learned trial magistrate considered as the sentencing of the appellant, it was stated as follows:

“A deterrence sentence solution. The offence attracts a minimum sentence of Kshs 5 million or in default 10 years imprisonment. Right of appeal 14 days.”

3. Section 64(4) of the **Energy Act**, No. 12 of 2012 provides as follows:

(4) A person who wilfully or with intent to interfere with the management or operation of the apparatus of a licensee—

(a) extinguishes or causes to be extinguished, any public lamps;

(b) vandalizes or damages any works of or under the control of a licensee;

(c) steals or, with intent to steal, break, throws down or damages any works of or under the control of a licensee; or

(d) steals, illegally trades or improperly uses any of the electrical energy supplied by a licensee, commits an offence, and shall be liable, on conviction, to a fine of not less than five million shillings or to imprisonment for a term of not less than ten years, or both.

4. Clearly, the learned trial magistrate failed to sentence the appellant. The only thing the court did was to set out the sentence as prescribed by the law and nothing else. However, section 382 of the **Criminal Procedure Code** provides as follows:

Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a court of competent jurisdiction shall be reversed or altered on appeal or revision on account of an error, omission or irregularity in the complaint, summons, warrant, charge, proclamation, order, judgment or other proceedings before or during the trial or in any inquiry or other proceedings under this Code, unless the error, omission or irregularity has occasioned a failure of justice

5. It is therefore my view that the Appellant quite properly withdrew this appeal. For avoidance of doubt the Appellant will serve 10 years imprisonment, the sentence to run from 13th April, 2015 pursuant to section 333(2) of the ***Criminal Procedure Code***.

6. It is so ordered.

Judgement read, signed and delivered in open court at Machakos this 12th day of March, 2020.

G V ODUNGA

JUDGE

In the presence of:

The Appellant in person

Miss Mogoi for the Respondent

CA Geoffrey