



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYAMIRA

CRIMINAL APPEAL NO. 34 OF 2018

EDWIN OGEKA.....APPELLANT

- VRS-

REPUBLIC.....RESPONDENT

{Being an appeal against the conviction and the sentence of Hon. B. M. Kimutai – SRM

dated and delivered on the 20th day of July 2018 in the Original Keroka

Principal Magistrate's Court Criminal Case No. 723 of 2018}

JUDGEMENT

On 20th July 2018 the appellant was found guilty and convicted for stealing 3 litres of chang'aa that were exhibits in Keroka Senior Resident Magistrate's Court. He readily admitted the charge and was sentenced to two years' imprisonment.

His grounds of appeal are that: -

“GROUND ONE

THAT my lord I pleaded guilty to the charge due to lack of guidance by the court as a novice in the matter of the and being my first time to appear before the court I was mere lured to plead guilty.

GROUND TWO

THAT my lord the trial learned magistrate faulted both in law and fact when maliciously contravened article 49 (1) (a) (c) 50 (1) (2) (a) (c) (g) (h) (j) (k) (i) 27 (1) (2) (4) (5) 28, 48, 25 (a) (c) of the constitution which grossly violated the constitutional rights of the appellant given to fact that the alleged offence was not premeditated by the appellant but he was fixed.

GROUND THREE

THAT my lord the trial learned magistrate further faulted both in law and fact when he failed to consider and observe that the appellant was a first offender who wanted the guidance of the court and he was not informed in advance the system and formalities involved in taking the plea.

GROUND FOUR

THAT my lord the trial learned magistrate similarly faulted both in law and fact when seemingly overlooked that the appellant was entitled to be informed to remain silent and that is high right to remain silent given that the appellant was not given time to rethink about the pleading guilty to the charge.

GROUND FIVE

THAT my lord the sentence of 2yrs imprisonment was manifestly oppressive the appellant being a first offender the

sentence of 2yrs would have been a none custodian sentence.

GROUND SIX

THAT the sentence of 2yrs imprisonment was a mere discrimination in the circumstance. That the overall effect is that may this appeal be allowed conviction quashed and sentence of 2yrs set aside and set appellant to liberty forthwith.”

He has by the appeal urged this court to quash the conviction, set the sentence aside and free him.

The appeal was canvassed orally. The appellant seemed to have abandoned the appeal against conviction because all he asked for was a reduction of the sentence. He did well to do so as it is my finding that his plea of guilty was unequivocal and the appeal against conviction would not have succeeded given the provisions of Section 348 of the Criminal Procedure Code that: -

“348. No appeal on plea of guilty, nor in petty cases

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.”

In sentencing the appellant, the trial magistrate noted that the appellant was a first offender. He however took into consideration that stealing of exhibits especially of chang’aa which was then sneaked into the market was prevalent. The trial magistrate imposed what one would call a sharp short deterrent sentence. Be that as it may, I have noted that the appellant is a young offender and that this was his first offence and a non-custodial sentence aimed towards his reforming would be the most appropriate. I am certain that the six months he has been in prison custody have taught him a lesson. Accordingly, his plea for reduction of the sentence is allowed conditioned upon his suitability for a probation order. Accordingly, the Probation Officer Nyamira is directed to file a report on the said suitability. Mention on the 29th day of January 2019 to consider the report.

Dated, signed and delivered at Nyamira this 24th day of January 2019.

E. N. MAINA

JUDGE