

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL APPEAL NUMBER 70 OF 2018.

FELIX OCHIENG OLOO.....APPELLANT

VERSUS

REPUBLICRESPONDENT

JUDGMENT

1. The Appellant herein was charged with robbery with violence contrary to Section 296(2) of the Penal Code. It was alleged that on 10th day of August, 2016 at around 2200hrs at Korogocho Slums in Nairobi within Nairobi County, jointly with others not before court while armed with dangerous weapons namely stones robbed Stephen Kariuki Githinji of cash Kshs. 1,700/= and a mobile phone make Samsung valued at Kshs. 8,000/= and a motor cycle Reg. No. KMDW 775C valued at Kshs. 100,000/= and at the time of such robbery used actual violence to be said Stephen Kariuki Githinji.

2. The Appellant was convicted accordingly and sentenced to serve twenty (20) years imprisonment.

3. In his Amended Grounds of Appeal, filed on 6th March, 2019, he appealed against both the conviction and sentence. However, at the hearing of the appeal on the same date, he dropped his appeal on conviction and submitted that he would only be appealing against the sentence. He offered mitigating factors namely; that he was 22 years old and that by the time he completes his sentence he would be aged 42 years. As such, all his youth would be wasted in prison accordingly rendering him hopeless in life. He added that he would wish to pursue a career if released, noting that he was a standard eight drop out and had a bright future. He stated that he was a last born of two boys and two girls. He said that his father died in December, 2018 when he was in prison and that he had an urge to visit his grave in a cemetery before it sunk. Further, that he had reformed and had learnt to take responsibility of what he does. He urged the court to give him a second chance in life.

4. Learned State Counsel, M/s Atina for the Respondent did not oppose the appeal. She noted that the Appellant was in custody throughout the trial and although the period spent in custody was considered, the court may give him a concession based on the fact that he was a first offender. She therefore urged the court to impose an appropriate sentence.

5. I have accordingly considered the submissions as well as the circumstances of the case. This is a case in which the complainant who testified as PW1 operated a motorcycle (boda boda) within Kariobangi Estate. He was well known to the Appellant whom he referred to as Felo. On the fateful date, PW1 boarded a boda boda and after alighting at his destination, was accosted by the Appellant and another called Jimpo. He was pulled off the road where he was robbed of his money and mobile phone. The said Jimpo took away his motorcycle and fled. He lost cash Kshs. 2,000/=. He was also injured on the head and treated at Huruma Nursing Hospital and later to Mama Lucy Hospital. The motor cycle was thereafter recovered and adduced as evidence in court. In his evidence, he stated that the injuries rendered him to start stammering when talking.

6. A perusal of court record shows that the medical report although identified by complainant in court was not adduced. The court is therefore unable to ascertain the nature of injuries the complainant sustained. At the same time, no medical officer testified in court. Having that in mind, the court would only take into account in addition to the injuries, other aggravating factors or lack of the same that would persuade the court to vary the sentence imposed on the Appellant. I have in mind in this respect the fact that the Appellant was a first offender and that the motor cycle was recovered. In addition, the Appellant took plea on 24th August, 2016 and was sentenced on 11th December, 2017. As at this date, he had spent one year and about four months in custody. As at date, he will have spent in custody approximately a period of two years and seven months.

7. My view is that the Appellant as a young man got into the wrong company and engaged in crime to eke a living, albeit, the wrong way. He appeared remorseful and ready to henceforth live an honest life. It is prudent to accord him a second chance to reorganize his life. In view therefore, I set aside the remainder of the sentence. I order that he be forthwith set free unless otherwise lawfully held. It is so ordered.

DATED and DELIVERED this 27th day of MARCH, 2019

G.W. NGENYE-MACHARIA

JUDGE

In the presence of:

1. Appellant present in person.

2. *Akuja for the Respondent*