



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIVASHA

CORAM: R. MWONGO, J.

CRIMINAL APPEAL NO. 9 OF 2018

GEOFFREY KAMAU HINGA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an Appeal from the Original Conviction and Sentence dated 18/02/2016 in Criminal Case No 564 of 2015 in the Chief Magistrate's Court, Naivasha, E. Kimilu, SRM)

JUDGMENT

1. The appellant herein has appealed against the sentence of seven (7) years imprisonment meted on him for the alternative charge of handling stolen goods contrary to **section 322 (2)** of the **Penal Code**. The particulars of the offence were that the accused, on 10th April, 2015, at Thangathi Village, Mukurweni Sub-County Nyeri, otherwise than in the course of stealing, dishonestly retained one motor vehicle registration number KBW 310E Mitsubishi FH body knowing or having reasons to believe it to be a stolen good.
2. The evidence in the lower court is as follows. One Peter Kinuthia, the owner of the aforesaid vehicle was called by his driver, John Karanja, who told him that he had been robbed of the vehicle. The vehicle had been transporting 220 bags of fertilizer, and was valued at about Kshs 5 million. The said vehicle had a tracking device. It was recovered with one person who was arrested.
3. The driver gave evidence that some robbers entered the vehicle, after he stopped to give a lift to one of them at Naivasha. They tied him up, and robbed him. The vehicle was later recovered in Mukurweini.
4. The investigating officer testified that they tracked the vehicle to Thangathi shopping centre. There, they saw it parked off the road. Two people alighted and entered into a coffee farm. The police gave a chase and eventually caught up with one of them - the Appellant, who they arrested. Inside the driver's cabin, the police found, amongst other things, the Family Bank card for the Appellant.
5. In his defence, the Appellant gave an unsworn statement in which he stated that he is a businessman. He said that on the material day he left his home in Mukurwe-ini to sell bananas. A vehicle then stopped where he was and four people introduced themselves as police officers. They asked him to board the car and he eventually found himself at Naivasha. Later he was charged with robbery with violence and an alternative charge of handling stolen property.
6. The lower court found that the Appellant had been in recent possession of the said vehicle; that he was seen alighting from it; that he ran into a coffee plantation seeking escape, but was arrested. He was convicted and sentenced for handling stolen goods.
7. After the Appellant was convicted, his mitigation was that he is an orphan; that his children depend on him; that he keeps his sister's child who has a disability and depends on him. He prayed for mercy.
8. **Section 322 (2)** of the **Penal Code** provides as follows:-

“A person who handles stolen goods is guilty of a felony and is liable to imprisonment with hard labour for a term not exceeding fourteen years.” (Emphasis supplied)

9. The Appellant submitted that the sentence was harsh and excessive considering that he was a first offender. He also stated that he was remorseful; had become reformed and had attained a diploma in theology; that he had attended vocational training on carpentry and joinery;

that he suffers ulcers and was the sole bread winner for the family.

10. The prosecution opposed the appeal, urging that the vehicle the Appellant had been convicted with handling was valued at over KShs 4.5 million. Counsel pointed out that the maximum sentence for handling stolen goods was 14 years. He submitted that the court had already exercised leniency.

11. I have carefully considered the appeal. The offence appears to have been intricately planned and was not an off-the-cuff occurrence. Further, the accused did not plead guilty, but took the case through a whole trial that lasted from 11th April, 2015 to 18th February, 2016.

12. In addition I agree with the prosecution that the trial magistrate exercised her discretion and meted a sentence of only seven (7) years despite the offence carrying a maximum of fourteen years. Having only been imprisoned for half the time, and given that a convict is entitled to remission of one third of his sentence, I am not inclined to interfere with the decision of the trial court. No grounds have been advanced that the exercise of the trial court's discretion was not proper or lawful.

13. Accordingly, the appeal is dismissed and the trial court's judgment is hereby upheld.

14. Orders accordingly.

Dated at Naivasha this 29th Day of July, 2019

RICHARD MWONGO

JUDGE

Delivered in the presence of:

1. Geoffrey Kamau Hinga Appellant in person
2. Ms Abuga for the State
3. Court Clerk - Quinter Ogutu