



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

CRIMINAL APPEAL NO. 12 OF 2017

VICTOR MACHI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(From the original conviction and sentence in criminal case No. 400 of 2017 of the Chief Magistrate's Court at Busia by Hon. W.K Chepseba– Chief Magistrate)

JUDGMENT

1. The appellant, **VICTOR MACHI**, was convicted of the offence of escape from lawful custody contrary to section 123 of the Penal Code.
2. The particulars of the offence were that on 28th February 2017 at **BUSIA POLICE LINES, BUSIA** Township within **BUSIA** County, being in lawful custody of **No. 2006077055 PC GEORGE OCHIENG**, escaped from the said custody.
3. He was convicted after he had pleaded guilty to the offence and sentenced to serve two years imprisonment.
4. He now appeals against the sentence which he claims was harsh and excessive.
5. The state conceded the appeal through Mr. Owiti, the learned counsel.
6. The facts of the prosecution case were briefly as follows:

At the time of escape from lawful custody, the appellant was serving a sentence of five years imprisonment and had 7 months to complete the said sentence. He had been deployed to Busia Police Lines where he was working with other prisoners. He was rearrested after about two weeks and charged.

7. Section 123 of the Penal Code provides as follows:

Any person who, being in lawful custody, escapes from that custody is guilty of a misdemeanour.

The maximum penalty for this offence is 2 years imprisonment.

9. An appellate court would interfere with the sentence of the trial court only where there exists, to a sufficient extent, circumstances entitling it to vary the order of the trial court. These circumstances were well illustrated in the case of **NILSSON vs. REPUBLIC [1970] E.A. 599**, as follows:

The principles upon which an appellate court will act in exercising its jurisdiction to review sentences are fairly established. The court does not alter a sentence on the mere ground that if the members of the court had been trying the appellant, they might have passed a somewhat different sentence and it will not ordinarily interfere with the discretion exercised by a trial Judge unless as was said in JAMES Vs. REX (1950), 18 EACA 147, it is evident that the Judge has acted upon some wrong principle or overlooked some material factor. To this, we would also add a third criterion, namely, that the sentence is manifestly excessive in view of the circumstances of the case. R Vs. SHERSHEWSITY (1912) C.CA 28 T.LR 364.

10. I am persuaded that the sentence was manifestly harsh bearing in mind the circumstances of this case. I will therefore reduce the sentence to one year imprisonment from the date he was sentenced.

DELIVERED and SIGNED at BUSIA this 19th day of April, 2018

KIARIE WAWERU KIARIE

JUDGE