



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERUGOYA

CRIMINAL APPEAL NO. 40 OF 2016

SIMON MUCHIRA GATIMU.....APPELLANT

V E R S U S

STATE.....RESPONDENT

JUDGMENT

The appellant was charged and convicted for the offence of theft of farm produce contrary to Section 8 (1)(a) of the Stock and Farm produce Theft Act. The court held that he was a repeat offender (having been charged for offence of theft of 10Kg of macadamia to which he pleaded guilty and was sentenced to 6 months imprisonment) and sentenced him to 3 years imprisonment.

He has appealed against the said judgment but later abandoned all his grounds of appeal except for sentence which he claims he has been in remand for 11 months where he has learned the work of barber and planting trees. That his wife passed away and his only daughter lives with his aging parents.

The prosecution opposed the appeal on sentence for the reason that the sentence was very lenient considering that the appellant was a repeat offender and was not remorseful.

Appeal on sentence:-

Bernard Kimani Gacheru –vs- Republic (2002)eKLR

The Court in holding that sentence given was well deserved and found absolutely no reason to interfere with it stated;

It is now settled law, following several authorized by this court and by the High Court, that sentence is a matter that rests in the discretion of the trial court. Similarly, sentence must depend on the facts of each case. On appeal, the appellate court will not easily interfere with sentence unless, that sentence is manifestly excessive in the circumstances of the case, or that the trial court overlooked some material factor, or took into account, some wrong material, or acted on a wrong principle. Even if, the Appellate Court feels that the sentence is heavy and that the Appellate Court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial court on sentence unless, anyone of the matters already stated is shown to exist.

George Karanja Njoroge –vs- Republic (2008)eKLR.

The court in affirm the sentence imposed by the Court below stated;

The last-listed case, an appellate Court decision, sets out the pertinent principles which must guide this court in disposing of the instant matter. The court in that case stated (p.270):

“The principles upon which an Appellant Court will act in exercising its jurisdiction to review sentences are firmly 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- R(1950) 18 EACA 147, ‘it evident that the Judge has acted upon some wrong principle or overlooked some material factor.’ To this we would add a third criterion, namely, that the sentence is manifestly excessive in view of the circumstances of the case”

Section 8(1) of the Stock and Farm Produce Theft Act provides:-

Any person who has in his possession produce which may reasonably be suspected of being stolen or unlawfully obtained, shall if he fails to prove to the satisfaction of the court that he came by the produce lawfully, be guilty of an offence and liable on conviction to the penalties prescribed for theft.

Therefore where a person is convicted of the offence under Section 8(1) above, such a person is liable on conviction to the penalties prescribed for the theft under **Section 275** of the **Penal Code**.

Section 275 of the Penal Code Provides:-

Any person who steals anything capable of being stolen is guilty of the felony termed theft and is liable, unless owing to the circumstances of the theft or the nature of the thing stolen some other punishment is provided, to imprisonment for three years.

The penalty for theft under **Section 275** above is three years therefore the sentence imposed upon the appellant was lawful. In addition, the appellant was a repeat offender therefore there is no reason whatsoever for this court to interfere with the sentence meted out to the appellant by the trial court as the same was neither harsh nor overly excessive. I am of the opinion that based on the law and the circumstances of this case, the appeal on the sentence is without merits. The trial magistrate considered all the factor, the sentence provided for the offence and the principles on sentencing where the appellant was a repeat offender. I dismiss the appeal.

Dated at Kerugoya this 13th day of April 2018.

L. W. GITARI

JUDGE

13/4/18