REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAPENGURIA

CRIMINAL DIVISION

CRIMINAL APPEAL NUMBER 6 OF 2018

BETWEEN

JOEL KIPTUM LOSHARIPO.....APPELLANT

AND

REPUBLIC.....RESPONDENT

(Being an appeal from original conviction and sentence dated on14th April, 2018

by Hon. V. O. Adet in Kapenguria SRM's Criminal Case number 601 of 2018)

CORAM: LADY JUSTICE RUTH N. SITATI

JUDGMENT

Introduction

1. On 14th April 2018, the appellant herein pleaded guilty to a charge of ***stealing contrary to section 275 of the Penal Code***. The particulars of which are that on the 8th of April, 2018 at Kanyarkwat Trading Centre in West Pokot Sub-County within West Pokot County, stole kshs.1800/-, the property of DORCAS CHEPKORIR. Upon conviction, the appellant was sentenced to 12 months imprisonment.

The Appeal

2. Being dissatisfied with both conviction and sentence, the appellant exercised his right of appeal by filing the petition of appeal on the 30th April, 2018. Although the appellant was convicted on his own plea of guilty, he raises the following home-made grounds of appeal:-

> **i. That the learned trial magistrate erred in both law and fact by convicting the appellant on the basis of evidence that was inconsistent, contradictory and lacking in merit.**
>
> **ii. That the learned trial magistrate erred in both law and fact by convicting the appellant without observing that the appellant was not given enough time to prepare his defense.**
>
> **iii. That the learned trial magistrate erred in both law and fact in failing to appreciate that the prosecution did not prove its case against the appellant beyond any reasonable doubt.**
>
> **iv. That the learned trial magistrate erred in law and fact in rejecting the appellant's defense without assigning any reasons thereto.**

3. The appellant prays that the appeal be allowed, conviction quashed and sentence set aside so that he is set free. The appeal was opposed on grounds that the plea was unequivocal and the sentence was neither harsh nor excessive.

4. This is a first appeal from a conviction on appellant's own plea of guilty. In this regard, this court is under a duty to examine with care whether the plea upon which the appellant was convicted was unequivocal. In determining this issue a number of authorities come to mind.

In ***Baya versus Republic [1984]KLR 657,*** the Court held, *inter alia*, that a court taking plea should ensure that "***the charge and all its essential ingredients must be explained to the accused in vernacular or some other language that he understands"*** and ***"the accused's own words in reply should be correctly translated into English and carefully recorded."***

5. In ***Chege versus Republic [1983] KLR 425***, the Court held that there is need for the trial court's record "***to show that the accused knew what he was committing to***," and further that the "***plea of guilty must be taken cautiously and the record should clearly reveal that the facts were read to the accused***," and "***the accused must be shown to have understood the facts and he knew what he was admitting to***." On this point, also see ***Mutuku versus Republic [1982] KLR 312*** to the effect that any failure by the trial court to fully comply with the provisions of ***section 207(2) of the Criminal Procedure Code (CPC), Cap 75 of the Laws of Kenya*** is curable under the law.

The Facts

6. The facts of this case, as read to the appellant are that on 8th April, 2018 at about 8.00am the complainant herein Dorcas Chepkorir was at her residence when the appellant who is a bodaboda rider approached her and requested for a loan of kshs.1,000/-. The appellant undertook to repay the money on the following day. The complainant gave the appellant Kshs.1,800/- and asked him to go and buy packets of supermatch at Kolongolo. The appellant left but never returned on the following day as promised. The appellant disappeared until 14th April, 2018 when he was arrested. He was taken to court and charged. No recovery of the stolen money was made.

Analysis, Issue for Determination

7. As stated earlier in this judgment, the issue for determination in this appeal is whether the plea of guilty entered against the appellant was unequivocal; that is to say whether the appellant understood and admitted the facts as given by the prosecutor. As I proceed further to consider the matter, I am aware that a conviction on a plea of guilty is not appealable except as to the extent and/or legality of the sentence. I am also aware of the case of ***Ndege versus Republic [1991] KLR 567*** to the effect that "***There is a long line of authority to the effect that the bar to an appeal against a conviction based on a guilty plea is not absolute***," and further that "***the appellate court is not bound to accept the accused's admission of the truth of the charge and convict him/her as there may in the words of statute appear sufficient cause to the contrary, for reasons such as an explanation of the circumstances giving rise to the facts as stated by the prosecution to the court."***

8. In ***Kisivi versus Republic [1991] KLR 125,*** the Court held the view, and I think correctly so, that "***unless the magistrate elicits and gets enough detail of what happened and how the accused before him/her was convicted with the offence charged, it is likely that the plea will not be unequivocal***."

9. Now, taking the above principles into account, and upon careful consideration of the trial court's record, I am satisfied that the plea taken by the trial court was unequivocal. First the charge was read and explained to the appellant in Kiswahili language which he confirmed he understood and in fact his answer to the charge was in Kiswahili. Thereafter the facts, which were brief, were read out to the appellant to which he replied, "**The facts are correct,"** and it was after that response that the plea of guilty was confirmed. The appellant does not contest the fact that indeed pleaded guilty to the charge of stealing and to the facts as read to him. He only submits that he is remorseful and from now henceforth, he will be an upright citizen who keeps away from alcohol. I have also considered the facts and find and hold that here was no error on the part of the trial court in accepting the appellant's admission of the facts. The facts are clear that instead of the appellant returning to the appellant's home with the goods he had been sent to buy, he disappeared from home for about one week when he was arrested on 14th April, 2018.

10. As I move towards the conclusion of this judgment, I must point out that the grounds of appeal, except the one on sentence have no relevance to this appeal, because the appellant did not offer any defense since the case against him did not go to full trial nor was any evidence adduced that could be said to have been inconsistent, contradictory and lacking in merit.

11. As for the sentence meted out to appellant, the same cannot be said to be either harsh or excessive in the circumstances. A conviction under section 275 of the Penal Code carries a maximum sentence of three (3) years. In all fairness to the learned trial court, the sentencing was fair. The appellant had sought to be given time to repay the money but when the case came up for mention on 18th April, 2018, there was no indication that the appellant was still willing to repay the stolen sum.

Conclusion

12. The conclusion of this matter is that I find no merit in the appellant's appeal on both conviction and sentence. The same is hereby dismissed in its entirety.

It is so ordered.

Judgment delivered, dated and signed in open court at Kapenguria on this 10th day of August, .2018.

RUTH N. SITATI

JUDGE

In the Presence of :

Appellant- present in person

Mr. Thuo state counsel for Respondent

Mr. Juma- Court Assistant