



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NANYUKI

CRIMINAL APPEAL NO. 20 OF 2016

FREDRICK GITHUKUAPPELLANT

versus

REPUBLIC.....RESPONDENT

(Being an appeal from the original conviction and sentence by Hon. E. BETT – SENIOR RESIDENT MAGISTRATE dated 8th June 2015 in Nanyuki Chief Magistrate’s Court Criminal Case No. 521 of 2015)

JUDGMENT

1. **FREDRICK GITHUKU** the appellant has filed an appeal against sentence of the Chief Magistrate’s Court Nanyuki which was passed on **8th June 2015**. The appellant on that date pleaded guilty to the **offence of stealing contrary to section 275 of the Penal Code**. The trial court considered that the appellant was a first offender and that he had a family dependent on him. Taking into consideration of those facts that and the fact that the offence was grave the court sentenced the appellant to **2 ½ years**.

2. In presenting his appeal the appellant submitted that he was remorseful for the offence he committed, the effect of which was adverse to his family. He further submitted that while serving the sentence he had sat for his Kenya Certificate of Primary Education exam and was now eligible to proceed with his secondary education. He submitted that he is hopeful of eventually attaining his dream to join a university to study law.

3. The Senior Principal Prosecuting Counsel Mr. Tanui did not oppose the appeal. He stated that the appellant was 3 months shy to serving 2 years imprisonment.

4. The purpose of sentencing an offender is to separate him from the rest of the society and rehabilitate him. This was what was stated in the case **REPUBLIC VS. JAGAN & ANOTHER [2001] KLR** the quote in the case held:-

“The purpose of a sentence is usually to disapprove or denounce unlawful conduct as a deterrent to deter the offender from committing the offence, to separate offenders from society if necessary to assist in rehabilitation of offenders, and in retribution by providing for reparation for harm done to victims in particular to society in general. It is also seen as promoting a source of responsibility in offenders.”

5. The appellant submitted that he was now reformed and vowed not to commit any offence if released from prison. In my view the appellant who is a young family man should be given a second chance by reducing the sentence.

6. Accordingly the appellant's appeal against sentence does succeed. The trial courts sentence is hereby set aside. The appellant is sentenced to the period so far served in prison. **This court orders that he be set free unless he is otherwise lawfully held.**

DATED AND DELIVERED THIS 22ND DAY OF MARCH 2017.

MARY KASANGO

JUDGE

CORAM:

Before Justice Mary Kasango

Court Assistant: Ndungu

Appellant: Fredrick Githuku

For the State:

Language:

COURT

Judgment delivered in open court.

MARY KASANGO

JUDGE