



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KIAMBU

CRIMINAL APPEAL NO. 5 OF 2017

[From the original Conviction and Sentence in Criminal Case No.256 of 2015 of the Chief Magistrate's Court at Thika]

MARTIN MUGENDI..... APPELLANT

-V E R S U S-

REPUBLIC..... RESPONDENT

J U D G M E N T.

1. This is the judgment of **Criminal Appeal no. 5 of 2017**. The Appellant **MARTIN MUGENDI** was initially charged in **Chief Magistrate's Court** at **Thika** of preparation to commit a felony **contrary to Section 308 (1)** of the **Penal Code**.

2. The particulars of which were that on the **16th June, 2015** at around **30 hrs** in **Madharau village, Thika – West Sub-County**, within Kiambu County, were jointly found armed [with] **offensive weapon**, namely **a panga, rungus and a sword** in circumstances that indicate that you were so armed with intent to commit a felony namely stealing.

3. The Appellant admitted that the offence and pleaded guilty to the charges and was subsequently sentenced to **7 years imprisonment**.

4. Being aggrieved and dissatisfied the appellant has appealed against the severity of the sentence.

5. His **Grounds of appeal** are largely his mitigations, namely:

1. He is remorseful.

2. He is a first offender.

3. The Trial Magistrate erred in law when she failed to observe that he was a sole breadwinner of his family and failed to consider his mitigations.

4. He seeks to be kept under supervision, to reform and be integrated back to society.

5. He regrets his actions and promises to be law abiding as he has now learnt his lesson.

6. He seeks for leniency in the said sentence either for a conditional discharge.

6. The First Appellant Court.

The first appellate court to read the proceedings, re-evaluate the evidence and come to its own independent conclusions, having regard to the fact the court neither saw, nor heard the testimonies of the witnesses, **Viva Voce, See Okeno Vs. Republic [1972] E.A Page 32.**

7. The Proceedings: the analysis.

The appellant, **MARTIN MUGENDI**, was charged jointly with **five (5) other** accused persons. However, in his case, he chose to **plead guilty** amongst four others who **pleaded not guilty**.

Thus, his admissions of guilty, saved the court its valuable time that the hearing would have taken to hear the case and did those four others.

In the light hereof, the court takes into consideration his passionate mitigation and **reduces his sentence to (3) years, inclusive of the two years** he has been in custody. Therefore, has **one more year to serve his three year sentence.**

8. Orders accordingly.

JUDGMENT WRITTEN AND SIGNED BY:

C. B. NAGILLAH

JUDGE

JUDGMENT DELIVERED, DATED AND COUNTERSIGNED AT KIAMBU IN OPEN COURT.

THIS 18TH DAY OF MAY 2017.

JOEL NGUGI

JUDGE

In the Presence of:

.....for Appellant

.....for Respondent

.....for Court Assistant