

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAROK

CRIMINAL APPEAL NO. 31 OF 2016

[Being from the original conviction and sentence in Criminal Case No. 66 of 2014 in the Chief Magistrate' Court at Narok, R. v. Elijah Kariuki]

ELIJAH KARIUKI KAROKIAPPELLANT

VERSUS

REPUBLICRESPONDENT

JUDGEMENT

1. The appellant has appealed against a 2 year imprisonment sentence in respect of the offence of breaking into a building and committing a felony contrary to section 306 (a) of the Penal Code (Cap. 63) Laws of Kenya, which charged him along with his co-accused of stealing an ultrasound scanning machine valued at Ksh.2 million, the property of Narok district hospital.

2. In his amended petition of appeal to this court, he has raised 6 grounds. In ground 1, he has stated the unchallengeable fact that he is a first offender. In ground 2, he has faulted the trial court in failing to consider a non-custodial sentence. In this regard the trial court in sentencing the appellant, took into account the mitigation of the appellant that he was a first offender and that his wife was unemployed. It also took into account that he had 3 children and the he was the sole breadwinner. It also took into account his plea for leniency and applied that a non-custodial sentence be imposed. And finally, he also urged the court to consider that the stolen machine had been recovered.

3. Furthermore, the court pointed out that the machine that was stolen was intended for diagnosis of various problems faced by members of the public and it was not a cheap machine. The court went further and found that the machine was recovered and proceeded to add that the appellant should not be left to work in a hospital where the facilities can be in danger of getting lost. The court also went further and found that it was necessary to discourage such theft by imposing a deterrent sentence and that is how a sentence of 2 years was imposed in order to protect the rights of the public. The maximum sentence provided for this offence is 7 years imprisonment in terms of section 306 (a) of the Penal Code.

4. Sentencing is a matter for the discretion of the trial court. This is clear from the provisions of section 28 (1) (b) of the Penal Code. In terms of those provisions, the court is given a discretion in imposing either a fine or a term of imprisonment.

In the instant appeal, the court opted to impose a custodial sentence. It took into account all the relevant matters namely that the appellant was a first offender, that he was a sole breadwinner of a young family with 3 children. It also took into account that the stolen machine was of a diagnostic nature upon which ailing members of the public dependent. I have considered all this matters and I find that the appellant was a public servant and in stealing the ultrasound machine he betrayed the public trust. In the circumstances, I find no error of law or fact that was committed by the trial court in sentencing the appellant. In the circumstances, this court cannot interfere with the discretion of the trial court.

6. The upshot of the foregoing is that the appeal against the sentence is hereby dismissed.

Judgement delivered in open court this 19th day of June, 2017 in the presence of Appellant and Mr. Mukofu for Respondent.

J. M. Bwonwonga

Judge

19/6/2017