



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KAKAMEGA**

**HCRA NO. 49 OF 2015**

**EDWARD O. NG'OLA:.....APPELLANT**

**V E R S U S**

**REPUBLIC :.....RESPONDENT**

**(Arising from the Judgment of Hon. D. Ogal criminal case No. 181 of 2015 at Chief Magistrate's Court at Kakamega )**

**J U D G M E N T.**

1. **Edward O. Ng'ola** the appellant was charged and convicted of the offence of escape from lawful custody contrary to section 123 as read with Section 36 of the penal Code. The particulars being that the appellant on 30<sup>th</sup> December, 2003 being at Kakamega G.K. Prison lawfully did escape from the said facility.

2. He had been held at the said prison over a criminal offence. Later on 30<sup>th</sup> September, 2014 he was arrested on charges of house breaking vide Butere Principal Magistrate's criminal case No. 360 of 2014 where he was convicted and sentenced to 3 years imprisonment.

3. When he was arraigned in court on 26<sup>th</sup> January, 2015 he pleaded not guilty to the charge of escape from lawful custody. He however changed plea on 10<sup>th</sup> March, 2015 and the facts were read to him. He admitted them, was convicted and sentenced to one year imprisonment.

4. When this appeal came for hearing he presented the court with written submissions. He is basically seeking a reduction of the sentence. He explained that his long stay in Prison had taught him a lot. That he had also developed illnesses and wished to be released so that he could manage his affairs from home.

5. The State through Mr. Juma opposed the appeal saying the sentence was commensurate with the offence and it was not harsh.

6. I have considered the material before me. The appellant is not contesting his conviction. He has produced a document from Kakamega G.K. Prison dispensary confirming that he is suffering from hypertension, arthritis and peptic ulcer.

7. It has been confirmed to me by an officer from G.K. Main Prison Kakamega **Mr. Mathews Omondi Okwesio** P/No. 32259 that the appellant has no other pending prison term save for the current one he is serving for escape from lawful custody. The same term will be completed on 16<sup>th</sup> April , 2018 which is 8 months to go.

8. The appellant has been in prison since September, 2014 and I am convinced he has learnt his lesson.

9. I allow the appeal on sentence which sentence I set aside. I substitute it with a sentence of the period already served.

10. The appellant shall be released forthwith unless lawfully held under a separate warrant.

Orders accordingly.

Delivered, signed and dated this 18<sup>th</sup> day of August, 2017 at Kakamega.

**H.I. ONG'UDI**

**JUDGE**