



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NANYUKI
CRIMINAL CASE APPEAL NO. 1 OF 2017
JAMES LPATIYAN.....APPELLANT
VERSUS
REPUBLIC.....RESPONDENT

(Being an appeal from the original conviction and sentence by Hon. B S Khapoya Ag. Senior Resident Magistrate dated 17th April 2015 in Maralal Principal Magistrate Court Criminal Case No. 275 of 2014)

JUDGMENT

1. The appellant **JAMES LPATIYAN** was charged with **two counts** of **robbery with violence** **Contrary to Section 296 (2) of the Penal Code** and an **alternative charge of handling stolen goods** **Contrary to Section 322 of the Penal Code**. After trial he was convicted on the alternative charge and sentenced to 14 years imprisonment. He has filed this appeal against that sentence.
2. In his written submissions the appellant has presented mitigation to the effect that he was a lay man, and could not follow the trial proceedings, that the trial court's sentence was harsh, and that in the 3 years he has been in prison he has reformed. Appellant in oral submissions before court alleged that he was framed up in the case before the lower court.
3. The Principal prosecuting Counsel Mr Tanui opposed the appeal on the ground that the appellant was convicted of handling a Nokia phone which was the subject of a violent robbery. Learned Counsel also submitted that the appellant's allegation that he was framed was an afterthought because he did not raised it during trial.
4. The appellant having elected to only appeal against sentence his submission that he was framed shall not be considered.
5. Although sentencing is always at the discretion of the trial court an appellant court can interfere with that sentence if it is manifestly excessive in the circumstances or if the trial court acted on wrong principles: see **BENARD KIMANI GACHERU – V – REPUBLIC [2002] eKLR.**
6. In this case the complainant was on 11th August, 2013 on the way to Wamba from Maralal in Samburu County. She was being driven by a driver. On the way they were stopped by armed men who proceeded to steal from them at gun point. One of the items stolen from the complainant was a Nokia Phone E 72 worth Kshs.30,000/=. That phone was on 2nd May, 2014 traced in the possession of an assistant chief of Serelipi Sub location. On being asked he stated he got the phone from his nephew. When his nephew was questioned he said he bought it from his cousin, the appellant. The appellant was arrested and charged as

stated above. The complainant who during the theft was forced at gun point to kneel and face down was unable to identify the accused as one of the robbers. Consequently the trial court convicted the appellant on the alternative charge, of handling stolen goods.

7. After conviction of the appellant who was said to be a first offender, the trial court sentenced him to 14 years. In this court's view that sentence was excessive and will therefore attract interference from this court. **Under Section 322 (2) of the penal code** the maximum sentence for the offence of handling stolen goods is 14 years. The appellant being a first offender should not have been sentenced to the maximum period. Granted that the phone was stolen from the complainant through violence and that the appellant throughout the trial never gave explanation of how he obtained possession of that phone. That notwithstanding appellant being a first offender, he should not have been sentenced to the maximum period set out in the statute. It is for that reason this court set aside that sentence.

8. Accordingly the trial court's sentence is hereby set aside. JAMES LPATIYAN is hereby sentenced to 4 years. That sentence shall begin to run from the date of conviction by trial court.

Dated and Delivered at Nanyuki this 2nd August 2017

MARY KASANGO

JUDGE

Coram

Before Justice Mary Kasango

Court Assistant: Njue

Appellant: James Lpatiyen

For state:

Language

COURT

Judgment delivered in open court

MARY KASANGO

JUDGE