



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NANYUKI**  
**CRIMINAL APPEAL NO. 17 OF 2016**

**CHARLES MWANGI MUHIA ..... APPELLANT**

*versus*

**REPUBLIC ..... RESPONDENT**

*(Being an appeal from the original conviction and sentence in Nanyuki Chief Magistrate's Court Criminal Case No. 226 of 2013 by Hon. E. BETT Senior Resident Magistrate on 23<sup>rd</sup> August 2017).*

**JUDGMENT**

1. **CHARLES MWANGI MUHIA** the appellant herein was charged before the Nanyuki Chief Magistrate's Court with the **offence of stealing a motor vehicle contrary to section 278 (a) of the Penal Code**. On being convicted following his trial he was sentenced to serve 7 years imprisonment. He is aggrieved by that sentence and accordingly has appealed against the same.
2. The facts relating to this case are that the appellant was an employee of Ol Pajeta ranch at its garage. He was responsible for the repair of motor cycles belonging to his employer. It is in that capacity that he was given motorcycle registration number KMCP 718 M. He was requested to carry out repairs on that motorcycle. The motorcycle was handed to him on 12<sup>th</sup> March 2013. The witnesses who testified before court stated that he failed to surrender back the motorcycle. indeed he absconded on his duties until his arrest on 26<sup>th</sup> March 2013.
3. In his submission in support of this appeal he submitted that he was a first time offender. That he has obtained a skill at prison which skill will assist him when he is released. He stated that he is a family man with a young family. Finally he said that he was remorseful and reformed.
4. I have considered the appellant's submissions. It is important to state that the motorcycle of his employer was never recovered. Accordingly his employer lost the use of that motorcycle. The appellant was in a place of trust. His employer had entrusted him to take care of its property. He breached that trust and the trial court was right in giving him a custodial sentence.
5. In the case of **SHADRACK KIPCHOGE KOGO V REPUBLIC [2015]eKLR** the Court of Appeal held that sentencing is at the discretion of the trial court. That that discretion can only be interfered with if that court took into account any irrelevant factor or applied the wrong principle when sentencing. The appellant court can also interfere where the sentence is either harsh or excessive.
6. Under **section 278 A** of the Penal Code, the maximum sentence is 7 years. The trial court sentenced the appellant to 5 years. In sentencing the appellant to 5 years the court had been informed the appellant was a first time offender. In this court's view the sentence of five years which is more than half the sentence

provided under section 278 A was excessive since appellant was a first time offender. It is because of that that this court is entitled to interfere with that sentence.

7. The upshot of this is that the sentence of the appellant is hereby set aside. The appellant is hereby sentence to serve 3 years from the date of his conviction. To that extent the appellant's appeal succeeds.

**DATED and DELIVERED at NANYUKI this 29<sup>th</sup> day of NOVEMBER 2017**

**MARY KASANGO**

**JUDGE**

**CORAM**

Before Justice Mary Kasango

Court Assistant: Njue/Mariastella

Appellant: Charles Mwangi Muhia .....

For the State: .....

Language: .....

**COURT**

Judgment delivered in open court.

**MARY KASANGO**

**JUDGE**