



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NANYUKI

CRIMINAL APPEAL NO. 68 OF 2017

TITUS MUNENE APPELLANT

versus

REPUBLIC RESPONDENT

(Being an appeal from the original conviction and sentence in Nanyuki

Chief Magistrate's Court Criminal Case No. 147 of 2017 by Hon. E. NGIGI

Senior Resident Magistrate on 25th August 2017)

JUDGMENT

1. The appellant **TITUS MUNENE** was convicted before the Nanyuki Chief Magistrate's Court on his own plea of guilt to the **offence of preparation to commit a felony contrary to section 308(1) of the Penal Code**. On being convicted the appellant was sentenced to serve 7 years. The appellant has brought this appeal seeking the reduction of that sentence.

2. In supporting that appeal he submitted that he has a young child who was being supported by his elderly parents. He also stated that he was now reformed.

3. The facts of the case are that on 28th January 2016 at about 2.00 am the complainant had woken up to use the bathroom. While he was up he noticed that the light at his kiosk was off. He approached his kiosk and noticed 3 men armed with metal rods. They were in the process of breaking the padlock of the kiosk. When they noticed the complainant those people ran away. They were chased by the complainant and the security guard. In that chase the appellant was apprehended. He was found to have a metal rod and a hammer.

4. It is important to state that the trial court when the appellant intimated that he wished to plead guilty adjourned the matter in order for the appellant to consider the consequences of his pleading guilty and the possibility of being sentenced to serve 7 years. On the following day the appellant again pleaded guilty and when the facts were read out by the prosecution he confirmed they were true.

5. **Section 308(1)** of the Penal Code under which the appellant was convicted is in the following terms:-

"308. (1) Any person found armed with any dangerous or offensive weapon in circumstances that indicate that he was so armed with intent to commit any felony is guilty of a felony and is liable to imprisonment of not less than seven years and not more than fifteen years."

6. It will be seen that the minimum sentence under that section is 7 years. It is the sentence the trial court gave the appellant. There was no error therefore in the sentence of the appellant which can invite this court to interfere with the sentence. It is also clear that the appellant in the company of others set out to steal the complainant's property on the night in question. Certain offences such as the one appellant committed deserve a custodial sentence. Since the sentence of the trial court was lawful the appellant's appeal fails and is dismissed. The trial court's sentence is hereby confirmed.

DATED and DELIVERED at NANYUKI this 29th day of NOVEMBER 2017

MARY KASANGO

JUDGE

CORAM

Before Justice Mary Kasango

Court Assistant: Njue/Mariastella

Appellant: Titus Munene.....

For the State:

Language:

COURT

Judgment delivered in open court.

MARY KASANGO

JUDGE