



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KABARNET

HCCRA NO. 166 OF 2017

JAMES NJUGUNA MWANGI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

[Being an Appeal from original conviction and sentence

in Kabarnet PMC.CR Case No. 387 of 2017 made

on 14/6/2017 by Hon. Tem u, PM]

JUDGMENT

1. The appellant was sentenced to imprisonment for one and a half (1½) years upon conviction on plea of guilty for malicious damage to property Contrary to section 339(1) of the Penal Code, the particulars of which were that he on 12th June, 2017 at about 10.00pm at Kabarnet Township in Baringo Central Sub-county within Baringo County willfully and unlawfully damaged the right side passenger window, rear and back windscreen of a motor vehicle registration number KAB 405X make Nissan B-12 all valued at Ksh. 9700/- the property of Mark Rotich.
2. In passing the sentence, the trial court sought to discourage by deterrence the menace of boda boda riders who it observed had become “a force [who] took the law into their hands without regard to others”. This court respects that view and supports the efforts to deter growing recklessness in the operations of boda boda motor cycle transport to eradicate impunity.
3. However, the appellant requests for alteration of the sentence to one of fine and urges that he has already served 4 months of the 18 months of the sentence.
4. The DPP considers the sentence of 1½ imprisonment as lenient in view of maximum sentence of 5 years imprisonment for the offence of malicious damage to property contrary to section 339 of Penal Code. Counsel, however, noted from the charge sheet and the proceedings that the appellant had offered to repair the said motor vehicle, and for that reason did not oppose a non-custodial sentence for the remaining period subject to the payment of the stated value of the windscreens to the complainant.
5. The court took advice of the Probation Officers whose report by Ms Ngochoi, of 13/11/2017 was negative for non-custodial sentence as it found that “the inmate has no fixed place of abode [and] consequently to get supervision is difficult”.
6. At the court appearance for the receipt of the Probation Officer’s Report, the complainant attended court and was paid the sum of Ksh.9700/-, the declared value of his damaged property.

7. In the circumstances, this court takes the view that the objects of deterrence and the need to eradicate impunity of boda boda riders are well served by the combination of the penal Orders for the payment of the value of the damaged property, the period of five (5) months imprisonment now already served by the appellant since sentence on 14/6/2017 and payment of a suitable fine of Ksh. 10,000/- as the alternative orders of Community Service and Probation have been ruled out by the Probation Officer. Such an order commands itself to me in view of the apparent youthful age of the appellant and the social need to engage the youth in productive activity.

ORDERS

8. Accordingly, pursuant to section 354 (3)(b) of the CPC, for the reasons set out above, the appellant having served five (5) months imprisonment and paid the value of the damaged property, the sentence of imprisonment for one and half (1½) years is altered to a sentence for imprisonment for the five months already served together with a fine of Ksh. 10,000/- and a further order that the appellant pays compensation in sum of Ksh. 9700/- being the value of the damaged property as set out in the charge sheet, in accordance with section 26(3) of the Penal Code allowing imposition of sentence of fine in addition to imprisonment.

9. The appellant will, therefore, be released from custody upon payment of the fine of Ksh. 10,000/-, in default the appellant shall serve two months (60) sixty days imprisonment.

DATED AND DELIVERED THIS 21ST DAY OF NOVEMBER 2017.

EDWARD M. MURIITHI

JUDGE

Appearances: -

Appellant in person

Ms. Macharia, Ass. Director of Public Prosecutions.