



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUSIA
CRIMINAL APPEAL NO. 33 OF 2015

RASHID MAKEBA APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Appeal against sentence of Hon. Miss Ndungu Chief Magistrate in CM Criminal Case no. 1404 of 2014)

JUDGMENT

1. The Appeal before me is against sentence only. Rashid Makeba(The Appellant) is serving a prison term of 7 years after a conviction was entered against him for the offence of Preparation to commit a felony contrary to Section 308 (a) of the Penal Code.
2. In this Appeal, the Appellant seeks a reduction of sentence. He says he is remorseful and undertaking vocational course while serving. That he is the sole breadwinner to his family. That he is suffering multiple illnesses that requires close monitoring and treatment. He generally, is of the view that the punishment is harsh.
3. The State Counsel told Court that the sentence imposed was the minimum sentence prescribed by the law and therefore lawful. He however thought that the conviction was vitiated because the learned magistrate failed to warn the accused person of the implication of pleading guilty.
4. An offender for the Crime under Section 308(1) of The Penal Code is liable to minimum imprisonment for a term of not less 7 years and not more than 15 years. Since, the minimum sentence is a custodial and for a substantial term, it is without doubt, a harsh sentence. The ends of justice would require that a person intending to plead Guilty to that offence should fully understand the consequence of that decision. The Magistrate taking plea should warn the Accused person of the consequences and the Court Record must show that the warning was given and the Accused Person understood the consequences of the plea.
5. The Court record before the Trial Court in the matter before me does not show that a warning was issued and if the Appellant had challenged the plea then this Court would have, without hesitation, quashed it. But the Appellant has submitted

“That my lordship I do not challenge the conviction but do challenge the sentence imposed by the learned magistrate.”

At the hearing of the Appeal, the Appellant was well aware of the penalty that his conviction attracts and still chose not to question the Plea. This Court is therefore of the view that it should not interfere with the conviction.

6. As pointed out earlier the minimum sentence prescribed by the law for the Offence under Section 308(1) is a jail term of 7 years. This minimum sentence is what the Learned Magistrate imposed. In that sense the sentence was lawful. And the antecedents of the Appellant did not help matters. The Appellant was a repeat offender and had been convicted for an offence related to stealing and sentenced to serve 5 years imprisonment. In the circumstances, I am unable to say that the Appellant was undeserving of the Sentence imposed.

7. The Appeal is dismissed.

Dated and signed at Busia this 27th day of MAY 2016.

F. TUIYOTT

J U D G E

Delivered on this 14th day of JUNE 2016

W. KORIR

J U D G E

In the presence of :-

ORWASA- C/Assistant

Obiri - . for the State

Appellant in person