

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT LODWAR

CRIMINAL APPEAL NO. 5 OF 2015

JOHNSON NGITIRA LONGOLAN.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(An appeal from conviction and sentence in original Lodwar PMCR 75/2015 delivered on 9/2/2015 by I.O Odhiambo Resident Magistrate)

JUDGMENT

The appellant **Johnson Ngitira Longolan** was charged in the Magistrate Court with the offence of **stealing contrary to section 275 of the penal code**. The particulars of the offence are that on the 22nd day of December, 2014 at Loiyoo village, Turkana central in Turkana County he stole **one mobile phone Techno M35 Imei No.135289060306203 valued at Kshs.6700 the property of Gladys Jesse**. He pleaded guilty to the charge and was convicted and sentenced to serve four (4) years imprisonment. Dissatisfied with the conviction and sentence the appellant preferred this appeal. Appellant filed grounds of appeal which are basically mitigating circumstances and why he ought not to have been sentenced to imprisonment. He contends that he was a minor at time of conviction; and a student and should not have been sentenced as if he was an adult. His written submissions fortify his contention then he was a minor, sickly, a first offender and a bread winner.

Mr. Kimanthi prosecuting counsel for the Respondent opposed the appeal and conviction as the appellant pleaded guilty. He however concedes appeal as sentence submitting that the sentence of 4 years imprisonment is excessive as conviction of the offence of stealing contrary to section 275 of the penal code attracts a maximum sentence of 3 years imprisonment.

The appellant did not produce any document to show that he is a student at any institution; or certificate of birth or notification of birth to show when he was born to determine his age. There was no evidence therefore to support his submissions that the appellant is a minor and this contention is consequently rejected.

On perusal of the proceedings it is clear the charge was read over to the appellant who when asked whether he admits or denies the charge replied "**ni Kweli**".

The facts were then narrated to him and he admitted the facts as they were true. He was then convicted. It is therefore clear to me that the plea was unequivocal and therefore the conviction as a plea of guilty was proper. That being so section 348 criminal Procedure Code provides

348 no appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on that plea by a subordinate court except as so the extent or legality of the sentence.

Having found that the appellant who properly convicted on his own plea of guilty, the appellant can only in the law appeal against the legality of sentence. The appellant was charged with the offence of stealing contrary to section 275 of the penal code. Section 275 of the penal code provides

275 Any person who steals anything capable of being stolen is guilty of an offence called theft

and is liable unless owing to the circumstances of the theft or the nature of the thing being stolen some other punishment is provided to imprisonment for three years.

The provision of section 275 under which he appellant was charged provides for a maximum sentence of 3 years imprisonment. It therefore follows that the sentence of 4 years imprisonment imposed by the trial magistrate is illegal. This court should therefore rectify the illegal sentence.

I therefore allow the appeal on sentence and set aside the sentence of 4 years imprisonment. The same is substituted with a sentence of **three (3) years** imprisonment. The same to be computed from the date the appellant was sentenced on 9/2/2015.

Signed, dated and delivered at Lodwar this 27th day of July, 2016

S N RIECHI

JUDGE