



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
CRIMINAL APPEAL NO 99 OF 2015

BONIFACE KINGORI MUINI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Appeal against conviction/Judgement sentence imposed on 22.12.2015 in Criminal case number 324 of 2014, Nyeri, by Ekhubi B.M. Juma, S.R.M.).

JUDGEMENT

The appellant was arraigned before the Senior Resident Magistrates court at Othaya charged with the offence of stealing by servant contrary to Section 268 as read with section 275 of the Penal Code.^[1] The appellant faced an alternative count of handling stolen property contrary to section 322 (1) (2) of the Penal Code.^[2] After evaluating the evidence, trial court put the appellant on his defence and explained to him his rights under the provisions of section 211 of the Criminal Procedure Code^[3] and the appellant opted to remain silent. The learned Magistrate found the appellant herein guilty and sentenced him to 2 years imprisonment triggering this appeal both against conviction and sentence.

A first appellate court must itself weigh conflicting evidence and draw its own conclusions^[4] and also scrutinize the evidence to see if there was some evidence to support the lower court's findings and conclusions. In doing so, it should make allowance for the fact that the trial court has had the advantage of hearing and seeing the witnesses.^[5]

The crux of the evidence was that the appellant was seen carrying some iron sheets but ran away, and later found selling iron sheets at Othaya and he again ran away and three iron sheets were recovered. I have evaluated the evidence tendered and I am persuaded that the prosecution evidence established the offence to the required standard, hence the conviction was proper. I am persuaded that the conviction was justifiable.

Regarding the sentence, sentencing is the discretion of the trial court but such discretion must be exercised judiciously and not capriciously. The trial court must be guided by the evidence and sound legal principles. It must take into account all relevant factors and eschew all extraneous or irrelevant factors. Certainly the appellate court would be entitled to interfere with the sentence imposed by the trial court if it is demonstrated that the sentence imposed is not legal or is so harsh and excessive as to amount to miscarriage of justice, and or that the court acted upon wrong principles or if the court exercised its discretion capriciously.^[6]

Sentencing is an important task in the matters of crime. One of the prime objectives of the criminal law is imposition of an appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of the crime and the manner in which the crime is done. There is no straightjacket formula for

sentencing an accused on proof of crime. What sentence would meet the ends of justice depends on the facts and circumstances of each case and the court must keep the gravity of the crime, motive for the crime, nature of the of the offence and all other attendant circumstances.

Thus, while exercising its discretion in sentencing, the court should bear in mind the principles of proportionality, deterrence and rehabilitation and as part of the proportionality analysis, mitigating and aggravating factors should also be considered.^[7]

The record shows that in arriving at the said sentence, the court took into account the fact that the appellant had two similar previous convictions. I find that the magistrate took into account relevant factors and did not err in imposing the said sentence and that the said sentence is not manifestly excessive in the circumstances of the case.

The upshot is that this appeal against both conviction and sentence fails and the same is hereby dismissed.

Right of appeal 14 days

Signed Delivered and Dated at **Nyeri** this **11th** day of **October** 2016

John M. Mativo

Judge

[1] Cap 63, Laws of Kenya

[2] Ibid

[3] Cap 75, Laws of Kenya

[4] Shantilal M. Ruwala V. R (1957) E.A. 570

[5] see Peters V. Sunday Post (1958) E.A. 424

[6] See Makhandia J (as he then was in Simon Ndungu Murage vs Republic, Criminal appeal no. 275 of 2007, Nyeri.

[7] See Somanvs Kerala {2013} 11 SC.C 382 Para 13, Supreme Court of India