



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NANYUKI

CRIMINAL APPEAL NO. 166 OF 2015

JACOB MAYIRA CHAMBARI 1st APPELLANT

versus

REPUBLIC RESPONDENT

Consolidated with

CRIMINAL APPEAL NO. 165 OF 2015

CHARLES MUTHEE MUTHONI 2nd APPELLANT

versus

REPUBLIC RESPONDENT

*(Being an appeal from the original conviction and sentence in Nanyuki Chief Magistrate's Court
Criminal Case No. 919 of 2014*

by Hon. W. J. GICHIMU Principal Magistrate on 27th October 2015.)

JUDGMENT

1. The two appellants **JACOB MAYIRA CHAMBARI (1st Appellant)** and **CHARLES MUTHEE MUTHONI (2nd Appellant)** were charged before the Nanyuki Chief Magistrate's court with the **offence of preparing to commit a felony contrary to section 308(1) of the Penal Code**. They pleaded not guilty and after trial they were convicted and sentenced to serve 7 years imprisonment. They have filed their appeals against that sentence.
2. The 1st appellant submitted in support of his appeal that he was a first offender; that he is reformed; he is remorseful; and he promises to be a role model in society if released from prison.
3. The 2nd appellant adopted similar grounds on his appeal against sentence. He however added that the period he served on remand was not considered when he was sentenced by the trial court.
4. Senior Principal Prosecuting Counsel Mr. Tanui opposed both appeals on the basis that the sentence of the trial court was the minimum sentence provided under section 308 (1). That therefore the trial court was right to sentence appellants to 7 years imprisonment.

5. Section 308(1) provides:-

“any person found armed with 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.”

That section fully supports the Senior prosecution’s counsel in his opposition to the present appeal. It follows that the sentence of the trial court was not excessive and the trial court in sentencing the appellants cannot be said to have failed to take in account material facts nor did that court act on wrong principles. The sentence meted out by the trial court is supported by the law.

6. On perusal of the trial court’s proceedings I noted that the 1st appellant was granted bail while the trial proceeded. There was no evidence that the 2nd appellant was released on bail during trial. It follows that the trial court ought to have invoked section 333 of the Criminal Procedure Act which in its proviso provides:-

“provided that where the person sentenced under (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody.”

The 2nd appellant’s period spent in custody should have been taken into account in his sentence.

7. Accordingly the judgment of this court is that the 1st and 2nd appellants’ appeal against sentence are hereby dismissed. The appellants’ sentence by the trial court is confirmed. The sentence of CHARLES MUTHEE MUTHONI the 2nd appellant shall take into account the period he spent in remand during his trial.

8. It is so ordered.

DATED AND DELIVERED THIS 19TH DAY OF DECEMBER 2016.

MARY KASANGO

JUDGE

CORAM:

Before Justice Mary Kasango

Court Assistant

Appellants: Jacob Mayira Chabari.....

Charles Muthee Muthoni

For the State:

COURT

Judgment delivered in open court.

MARY KASANGO

JUDGE