



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT GARISSA
CRIMINAL APPEAL NO. 32 OF 2014
PETER MWENDWA KISOVOACCUSED
VERSUS
REPUBLIC RESPONDENT

JUDGMENT

The appellant was charged in the subordinate court with stealing by servant contrary to section 281 of the penal code. The particulars of offence were that on various dates between 15th January 2014 and 27th February 2014 at Kamuwongo market, Kamuwongo location, Kyuso Sub Location in Kitui County being a servant to Mary Mwende Mumbi stole Kshs. 29,587/= the property of Mary Mwende Muli which came into his possession by virtue of his employment. He is recorded as being pleaded guilty. He was thus convicted and sentenced to serve two years imprisonment.

The appellant was dissatisfied with the decision of the trial court. He thus filed an appeal through his advocate C. K. Nzili and Co. His grounds of appeal are as follows:

1. The learned trial magistrate had in law and in fact in finding that the appellant was guilty on a plea of guilty without satisfying himself if the accused had understood the charge and the facts.
2. The learned trial magistrate had in law and in fact in convicting on a plea which was not an equivocal
3. the learned trial magistrate had in law and in fact by failing to accord the accused the services of an interpreter in a language he understood.
4. The learned trial magistrate had in law and in fact by giving an excessive sentence without considering the accused mitigation and the circumstances of the case.

The counsel for the appellant also filed written submissions on 4th December 2014. Mr. Nyaga who appeared on the hearing date on behalf of the appellant relied on the submissions filed. Counsel emphasized that the appeal was against both conviction and sentence.

Learned prosecuting counsel Mr. Orwa opposed the appeal. Counsel submitted that the court record was clear that the language used in court was English and Kiswahili and Kikamba. In counsel's view the appellant understood Kikamba language which was the language being used on appeal to explain the proceedings to the appellant. Counsel submitted that as the appellant admitted the charges, the plea of guilty was correctly entered. The prosecution then proceeded to give the facts of the case on the same day and the appellant admitted the same. The appellant cannot thus come to court and say he did not understand the language used in summarizing the facts. In any event counsel submitted, the appellant admitted the facts in his mitigation. Therefore his complainant about the conviction should be dismissed. Counsel emphasized that the procedure laid down in the case of Adan Versus Republic was followed.

Counsel submitted that the facts herein cannot justify a retrial. Being elderly was not a ground for a retrial. Counsel submitted that since the appellant was convicted on his own plea of guilty, section 348 of the Criminal Procedure Code only allowed him to appeal on sentence. He has not given any information to this court that would support the contention that the sentence was excessive. The appellants' mitigation was considered by the trial court and as such there was no basis for interfering with the sentence.

At the time the prosecuting counsel finalized his oral submissions Mr. Nyaga for appellant had left the court. The appellant thus in person responded to the submissions of the Prosecuting Counsel. He stated that he wanted to be released. That he had told the lower court that his employer owed him some money. He submitted that he pleaded guilty thinking that he would have been fined and left to pursue his debt. To his surprise he was put in custody and not given a chance to explain further.

This is a first appeal. I am thus required to re-examine all the evidence and the entire record and come to my own conclusions and inferences.

The appellant was convicted on his own plea of guilty. He now says that he didn't understand the language used. I have perused the record. The proceedings of 4th March 2014 were conducted in English, Kiswahili and Kamba language. The clerk was Mr. Mulinge. When the charge was read to the appellant he is recorded to have replied it is true in Swahili language. The facts were immediately summarized by the prosecutor and he said the facts were correct. He was given a chance to mitigate and he said he had asked for time to pay her employer as people were expecting salaries but she refused. In my view considering all that transpired in court, it cannot be said that the appellant did not understand the proceedings. His mitigation clearly indicated that he understood the complaint against him and that he was offering way of solving the problem by suggesting he be given time to pay the amount. He did not say anything that suggested that he did not commit the offence. In my view the procedure laid down in the case of Adan Versus Republic was complied with. In my view the plea of guilty recorded against the appellant was unambiguous. I dismiss the appeal on conviction.

With regard to sentence the appellant was allowed to say something in mitigation. Though the trial court did not specifically refer to the mitigation in the sentencing, in my view the sentence of two years imprisonment handed down by the trial court cannot be said to be harsh and excessive, in view of the amount of money lost by the complainant, who was an employer of the appellant.

In conclusion I find that the appeal herein has no merits. I dismiss the appeal and uphold both the conviction and sentence of the trial court.

Dated and delivered at Garissa this 19th February 2015

GEORGE DULU

JUDGE