



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA
CRIMINAL APPEAL NO. 155 OF 2012

BETWEEN

VINCENT SHAMALLA MOI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal from original conviction and sentence in Kakamega CMCCR case No. 748 of 2012 delivered on 21/06/2012 by Hon. S.M. Shitubi, CM)

JUDGMENT

1. The appellant **VINCENT SHAMALLA MOI** was charged at the Chief Magistrates Court at Kakamega with the Offence of Robbery contrary to **section 296 (1)** of the Penal Code. Particulars of the offence were that *on the 5th day of April 2012 at around 19.00 hours at Shiswa sub-location Muranda Location in Kakamega East within Western Province jointly with two others not before court robbed **ACKEDUS AMUKANGA AREMA** of a mobile phone make G-TIDE M99 valued at KShs.3,400/= and at or immediately after the time of such robbery used actual violence to the said **ACKEDUS AMUKANGA AREMA**.*

2. After hearing both parties the trial court found the appellant guilty and convicted him .He was sentenced to five (5) years imprisonment. Being aggrieved and dissatisfied with the said judgment ,conviction and sentence he appealed to this court against conviction and sentence on the following home-made grounds:

1. That he did not plead guilty to the alleged offence .
2. That the trial magistrate erred both in law and fact in convicting him on the evidence of a single eye witness i.e. the complainant.
3. That the trial court convicted him while the weight of the evidence on record never warranted a conviction.
4. That the prosecution shifted the burden of proof to him.
5. That the trial court never considered his alibi sworn defence which was sufficient enough to warrant an acquittal.
6. That the sentence was very harsh.

7. That more grounds will be adduced upon the lower court proceedings.

3. During the hearing of the appeal, the appellant abandoned all other grounds of appeal and only pursued ground 6 of the appeal which deals with the issue of sentence. The appellant who acted in person submitted that he was sentenced to five (5) years imprisonment of which he has served two (2) years and eight (8) months. He further submitted that he was seeking for reduction of sentence because he was sick including his eyes. He also submitted that while in prison he has learnt some trades in appropriate technology-HIV Counseling and entrepreneurship. He claims to have a young family with three (3) children and that he is HIV Positive.

4. Mr. Ngetich, prosecution counsel, opposed the appeal on the ground that the sentence of imprisonment of 5 years meted out to the appellant when compared to the maximum sentence of 14 years was a very lenient sentence indeed. Counsel urged the court to confirm the lower court sentence and to dismiss the appeal.

5. The principles upon which an appellate court may interfere with the sentence passed by a trial court are now well settled. In the case of **Diego –vs- Republic [1985] KLR 621**, the Court of Appeal held, inter alia, that *“an appellate court should not interfere with the discretion by a trial judge as to sentence except in such cases where it appears that in assessing the sentence, the judge acted on some wrong principles or has imposed a sentence which is manifestly inadequate or manifestly excessive.”*

6. Applying the above principles to the instant case, and considering the fact the learned trial magistrate had the discretion to impose any sentence between one (1) year and 14 years, I do not think that it can be said that the learned trial magistrate applied the wrong principles in assessing the sentence of 5 years, nor can be said that the said sentence is either manifestly inadequate or manifestly excessive.

7. From his submissions, it is clear that the only reason why the appellant wants the sentence reduced is because, as he alleges, he is sick and has a young family. The appellant did not, however, place any documentary evidence before court to prove either his HIV status or even his general state of health. In any event, even if the appellant was unwell, the court is aware that treatment for HIV is free in all government hospitals and the appellant has not demonstrated that such treatment is not or would not be available to him.

8. The court notes that the appellant has greatly benefited from the rehabilitation programmes at the prisons and the training he has received should help him once he gets out of prison. The court also notes that the appellant has already served more than half of his term.

9. In the premises, and for reasons that it has not been shown that the trial court acted on wrong principles in assessing the sentence or that the sentence is either manifestly inadequate or excessive, I find no merit in the appellant’s appeal on sentence and dismiss the same. The sentence assessed by the learned trial magistrate is confirmed.

10. Orders accordingly.

Delivered, dated and signed in open court at Kakamega this 18th day of March 2015

RUTH N. SITATI

J U D G E

In the presence of

Present in person Appellant

Mr. Oroni (present) ... for Respondent

Mr. F. Juma ...Court Assistant