



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL DIVISION**

**CRIMINAL APPEAL NO.117 OF 2012**

*(An Appeal arising out of the conviction and sentence of Hon. W. Ngumi-*

*RM delivered on 23<sup>rd</sup> February 2012 in Makadara CM. CR. Case No.2458 of 2011)*

**PATRICK MACHARIA GACHOKA.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

The Appellant, Patrick Macharia Gachuka was charged with **theft from person** contrary to **Section 279 (a)** of the **Penal Code**. The particulars of the offence were that on 21<sup>st</sup> day of May 2011 along Hakati road in Nairobi within Nairobi area province, jointly with others not before court, the Appellant stole cash Kshs. 13,000/-, one laptop make macbook, a mouse, one external hard disk make Toshiba, one ipad, two modems, one ideos phone serial No.355093041597200, one wrist watch make casio, a wallet, school identification card, national identification card, one bluetooth adaptor and other personal effects all valued at Kshs.300,000/- the property of Geroge Muriithi Wanjiku, from the person of the said George Muriithi Wanjiku. When the Appellant was arraigned before the trial magistrate's court, he pleaded not guilty to the charge. After full trial, he was convicted as charged. He was sentenced to serve eight (8) years imprisonment. He was aggrieved by his sentence and duly filed an appeal to this court.

In his petition of appeal which is in form of mitigation, the Appellant essentially pleaded with the court for a reduction of the custodial sentence that was imposed on him. He stated that he was a first offender. He was the sole provider for his family who were suffering due to his incarceration. During the hearing of the appeal, the Appellant reiterated the contents of his petition of appeal. He told the court that he had reformed in the period that he has been in prison. He stated that he was now skilled in carpentry. He therefore pleaded with the court to exercise leniency on him and reduce the sentence that was imposed on him. Ms. Kimiri for the state opposed the plea for reduction of sentence. She submitted that the Appellant was convicted of the lesser charge of theft given that the circumstances of the case had established the offence of robbery with violence. In the premises therefore, she urged the court to disallow the appeal and confirm the sentence of the trial court.

The Appellant is appealing against sentence. When the trial court sentenced the Appellant to serve the custodial sentence, it was exercising judicial discretion. As an appellate court, this court will only interfere with such exercise of judicial discretion if it is established that the sentence was manifestly harsh or excessive or was so lenient as to amount to a miscarriage of justice. This court will interfere with the sentence if it is established that the sentence was unlawful. In the present appeal, the Appellant urged the court to interfere with the custodial sentence that was imposed on him by the trial court. He pleaded with the court to exercise leniency on him. He told the court that he had reformed. On the other hand, the State urged the court to confirm the sentence that was imposed by the trial court stating that it was reasonable considering that the Appellant was charged with a lesser offence of theft.

This court has carefully considered the plea for reduction of sentence made by the Appellant. It has also re-evaluated the facts of the case. This court is of the view that the Appellant's appeal has merit because

of the length of time that he has spent in prison. Although the custodial sentence imposed on the Appellant was legal, this court is persuaded by the plea made by the Appellant that in the period that he has been in prison he has learnt his lesson. It is hoped that the Appellant will be a useful member of the society upon his release.

In the premises therefore, the Appellant's plea for reduction of sentence has merit and is hereby allowed. The custodial sentence imposed by the trial court is hereby commuted by this court to the period that the Appellant has already served. He is ordered set at liberty forthwith unless otherwise lawfully held. It is so ordered.

**DATED AT NAIROBI THIS 22<sup>ND</sup> DAY OF JUNE 2015**

**L. KIMARU**

**JUDGE**